

# ACT 513/1991

## COMMERCIAL CODE

as amended by the Act 264/1992 Coll., Act 600/1992 Coll., Act 278/93 Coll., Act 249/94 Coll., Act 106/1995 Coll., Act 171/1995 Coll., Act 58/1996 Coll., Act 317/1996 Coll., Act 373/96 Coll., Act 11/1998 Coll., Act 127/1999 Coll., Act 263/99 Coll., Act 238/2000 Coll., Act 147/2001, Act 500/2001, Act 426/2002 Coll., Act 510/2002 Coll., Act 526/2002 Coll., Act 530/2003 Coll., Act 432/2004 Coll., and by the Act 315/2005 Coll.

The National Assembly of the Slovak Republic passed this Act as follows:

### TITLE ONE GENERAL PROVISIONS

#### CHAPTER ONE FUNDAMENTAL PROVISIONS

##### PART I INTRODUCTORY PROVISIONS

###### Section 1 SCOPE OF APPLICATION

- (1) This Act shall govern the status of entrepreneurs, the rights and duties arising out of business, as well as some other rights and duties related to business.
- (2) The matters referred to in subsection 1 above shall be governed by the provisions of this Act. If it is impossible to regulate any matters by the provisions of this Act, then the provisions of the Civil Code shall apply. If it is impossible to regulate such matters neither by the provisions of the Civil Code, then the prevailing business usage shall apply, and in the event of its absence - the principles, on which this Act is based.

###### Section 2 BUSINESS

- (1) The term “business” shall mean systematic activities, which are independently conducted for the purpose of making a profit by an entrepreneur in his own name and at his own responsibility.
- (2) Under this Act, any of the following persons shall be regarded as entrepreneur:
  - a) a party registered in the Companies Register,
  - b) a party conducting business pursuant to a Trading License,
  - c) a party conducting business pursuant to an authorization other than Trading License pursuant to special legislation,
  - d) an individual engaged in agriculture, who is entered in a register according to special legislation.

(3) The registered office of a legal entity and the place of business of an individual shall be the address, which is registered as its registered office or his/her place of business in the Companies Register, in the Trade Register, or in other registers contemplated by a special act.

(4) The term “address” shall mean the name of the town or village, including its ZIP code, the name of the street or other public premises and the informative number or, as appropriate, the bulk number if the village does not have any streets.

(5) The term “residence of individual” shall mean the address of his permanent residence pursuant to special legislation.

###### Section 3

- (1) The validity of a certain action at law shall not be affected by the fact that a certain party was prohibited to conduct business or that a certain party is not authorized to conduct business.
- (2) The party, which conducts business without being authorized thereto, and the parties, which conduct the business on its behalf or for its account, shall be liable for any damage caused thereby. Their liability pursuant to special legislation shall hereby not be affected.

###### Section 3a

- (1) Any entrepreneur shall specify, on its business letters and orders made in writing or in electronic form (hereinafter referred to only as “business documents”), its business name, registered office or place of business, the corporate form of its legal entity and the identification number, if any. Entrepreneurs registered in the Companies Register or in other registers of entrepreneurs, shall also indicate the register, in which they are registered and the date of entry. If the entrepreneur specifies, on its business documents, also the amount of its registered capital, it must indicate, to which extent the registered capital has been paid up.
- (2) Entrepreneurs shall indicate the data under subsection 1 above also in any official correspondence.

###### Section 4

The provisions of this Act shall also govern the rights and duties of persons other than entrepreneurs, if so provided by this Act, or by a special act.

##### PART II ENTERPRISE AND BUSINESS PROPERTY

###### Section 5

For the purposes of this Act, the term “enterprise” shall mean the whole of tangible, intangible and personnel assets, which are used in business. The enterprise comprises assets, rights and other valuables, which belong to the entrepreneur and are or, due to their characteristics, are supposed be used for the operation of the enterprise.

###### Section 6

(1) For the purposes of this Act, the term “business assets” shall mean the aggregate of property values (assets, claims and other rights and values, which may be expressed in money terms), which belong to the entrepreneur and are used, or are intended to be used, in the conduct of its business.

(2) For the purposes of this Act, the term “business property” (hereinafter referred to only as „property“) shall mean the aggregate assets and liabilities, which have accrued to the entrepreneur in connection with its business.

(3) The term “net property ” shall mean the business assets minus the liabilities, which accrued to the entrepreneur in connection with its business.

(4) The term “equity” shall comprise the own sources of financing of business property of the entrepreneur pursuant to special legislation.

#### **Section 7**

##### **ORGANIZATIONAL UNITS OF AN ENTERPRISE**

(1) The term “organizational unit of an enterprise” shall mean a branch or another organizational unit of an enterprise referred to in this Act or in a special act. A branch of an enterprise shall be an organizational unit of an enterprise, which is registered as branch in the Companies Register. A branch shall use the name of the enterprise with an addendum indicating the branch concerned.

(2) An organizational unit of an enterprise other than branch shall have status similar to that of a branch in cases, in which the law requires registration of such an organizational unit into the Companies Register.

(3) The term “establishment” shall mean the premises, in which a specific business is being conducted. The establishment must bear the entrepreneur’s business name, to which the name of the establishment, or another designation specifying the business premises in question, may be attached.

### **PART III BUSINESS NAME**

#### **Section 8**

The term “business name” shall mean the name, under which the entrepreneur takes actions at law at the conduct of its business.

#### **Section 9**

(1) The business name of an individual (sole entrepreneur) shall be the person’s name and surname (hereinafter referred to only as „name“). The business name of an individual may include an addendum in order to distinguish the entrepreneur or the type of his business.

(2) The business name of a partnership, company and co-operative shall be the name, under which the partnership, company or co-operative have been registered in the Companies Register. The provision above shall apply also to those legal entities, which are registered in the Companies Register under a special act. Business names of legal entities shall also include an addendum specifying their corporate form.

(3) The business name of a legal entity, which is not registered in the Companies Register, shall be the name under which it was established.

(4) Entrepreneurs shall identify themselves using business names containing an addendum referring to their status, such as “in liquidation”, “in bankruptcy” or “in arrangement with creditors”.

#### **Section 10**

(1) The business name shall not be confusing with the business name of another entrepreneur and shall not invoke a false idea of the entrepreneur or its scope of business.

(2) The business names of several legal entities may express a joint shareholding of partners, members or shareholders, provided it is possible to distinguish one business name from the other.

(3) A different corporate form shall not be sufficient to distinguish a business name of a legal entity. As regards individuals, the specification of another place of business shall be sufficient. If the individual has the same name and surname as another entrepreneur in the same place of business, it must include into his business name an addendum making reference to the name or type of business, so that the business names are not confusing.

(4) If more persons conduct a joint business under a common name without having established a legal entity, such persons shall be jointly and severally liable for any obligations, which have accrued out of their business.

#### **Section 11**

(1) In case a person inherits an enterprise from a sole entrepreneur, the heir shall be free to keep conducting the business under the current business name, with an addendum indicating the successorship and the heir’s name. The above shall apply to the acquisition of an enterprise from a sole entrepreneur under a contract, subject to the provisions of Section 481 subsection 2 below.

(2) If a sole entrepreneur alters his name, then he may use his previous name as part of the business name, together with an addendum comprising his new name.

(3) The business name of a legal entity shall be transferred to the successor-in-law together with the enterprise in cases, in which the original legal entity ceases to exist without liquidation and its successor-in-law takes over the current business name. In case the successor-in-law has a different corporate form than the original legal entity, the addendum specifying its corporate form must be amended accordingly.

(4) Any transfer of a business name without a simultaneous transfer of the enterprise shall not be allowed. In case of transfer of one part of the enterprise only, the transfer of the business name shall only be allowed if the remaining portion of the original enterprise starts to conduct its business under another business name, or if it is liquidated.

(5) In case the business name of a legal entity includes the name of a partner, member, or shareholder who ceased to be partner, member, or shareholder, the legal entity shall be free to use the name of such former partner, member, or shareholder as part of its business name only with the approval of the former. The approval of the heir shall be required upon decease of such partner, member, or shareholder.

#### **Section 12**

(1) A party, whose rights have been impaired by unauthorized use of a business name, may demand that the unauthorized user refrains from any further use of the business name and provides a remedy. The impaired party may further demand surrender of any unjustified benefits plus an adequate relief, which may be granted also in cash.

(2) If damage is caused by any unauthorized use of a business name, indemnities may be claimed pursuant to this Act.

(3) In its ruling the court may adjudge to the winning party the right to publish the court’s ruling at the expense of the losing party, and, as appropriate, specify also the extent, the form and the terms of publishing of the ruling concerned.

## **PART IV ENTREPRENEUR'S CONDUCT**

### **Section 13**

- (1) If the entrepreneur is an individual (sole entrepreneur), he shall act either personally or through a representative. A legal entity shall act through its statutory body, or through its representative.
- (2) The provisions of this Act concerning the partnership, limited liability company, joint stock company and co-operative shall define the statutory bodies thereof, the conduct of which shall be regarded as the conduct of the entrepreneur.
- (3) The entrepreneur shall be bound by actions of persons, in whom the powers of the statutory body are vested, even if their conduct goes beyond the scope of business, except for cases, in which such persons act beyond the powers of the statutory body, which are or may be awarded thereto by the law.
- (4) Any restriction of authority of the statutory body to take actions on behalf of the entrepreneur shall not be effective vis-a-vis third parties, even if it is published.
- (5) A director of an organizational unit of an enterprise or a director of an enterprise of a foreign party, whose names are registered in the Companies Register, shall be authorized to take, on behalf of the entrepreneur, any action at law pertinent to such an organizational unit or enterprise. Also the statutory body of a foreign party registered in the Companies Register shall be authorized to take actions on behalf of the enterprise or an organizational unit of the foreign party.

### **Section 14 PROCURACY**

- (1) An entrepreneur may issue a procuracy authorizing a procurator to take any actions on behalf of the entrepreneur which occur in the normal course of business, even though such actions may require a special power of attorney. The procuracy may only be issued to an individual.
- (2) The procuracy shall not include authorization to alienate and encumber real estate, unless such an authorization is expressly specified in the procuracy.
- (3) Any restrictions of the procuracy by internal instructions shall not be effective vis-a-vis third parties.
- (4) A procuracy may be issued to several persons, in which case each of the procurators shall be authorized either to act and undersign instruments individually or jointly, whereby the consent of all the procurators (or of at least two of them) shall be required.
- (5) A procurator shall undersign instruments as follows: he shall attach to the instrument the business name of the entrepreneur, plus an addendum indicating the procuracy and his signature.
- (6) The procuracy shall be effective from the date of its registration into the Companies Register. A request of registration of the procuracy into the Companies Register must include the full name and residence of the procurator and the signatory powers thereof (manner, in which instruments shall be executed thereby on behalf of the entrepreneur). If the procuracy is granted to more than one person, then the request must specify whether each procurator shall act individually, or alternatively, how many of the procurators shall act jointly.

### **Section 15**

- (1) A person who has been entrusted to perform certain tasks in the operation of an enterprise shall be deemed to be authorized to carry out any and all the actions that are usually associated with such tasks.
- (2) If a party by its conduct goes beyond the scope of its authorities referred to in subsection 1 above, such a conduct shall be binding upon the entrepreneur only if the third party was not or, taking into account of all the underlying circumstances, could not be aware that the conduct went beyond such authorities.

### **Section 16**

An entrepreneur shall also be bound by actions of persons other than above, which are taken inside the entrepreneur's establishment, unless the third party must have been aware that such conduct was unauthorized.

## **PART V BUSINESS SECRETS**

### **Section 17**

The rights belonging to an enterprise comprise also its business secrets. Business secrets shall consist of all the facts of trading, manufacturing and technological nature related to the enterprise, which have actual, or at least potential, tangible or intangible value, are normally not available in the respective industry and the entrepreneur wishes that the same are not disclosed, provided that the entrepreneur adequately provides for the confidentiality thereof.

### **Section 18**

Unless otherwise provided by a special act, the entrepreneur running an enterprise, to which the provisions on business secrets are applicable, shall have exclusive rights to dispose with the business secret, including but not limited to authorizing third parties to use the same and to determine the terms and the conditions of any such use.

### **Section 19**

The right to a business secret shall survive as long as the conditions under Section 17 above are satisfied.

### **Section 20**

As regards any violation or impairment of the right to business secret, the entrepreneur shall be entitled to the same legal protection to which it is entitled in case of unfair competition.

## **CHAPTER TWO BUSINESS OF NON-RESIDENTS**

### **PART I FUNDAMENTAL PROVISIONS**

### **Section 21**

- (1) Non-residents shall be authorized to conduct business in the territory of the Slovak Republic under the same conditions and to the same extent as residents, unless the law provides otherwise.

(2) For the purposes of this Act, the term “non-resident” shall mean any individual resident and any legal entity having its registered office outside the territory of the Slovak Republic. For the purposes of this Act, a legal entity with its registered office in the Slovak Republic shall be regarded as a resident legal entity.

(3) For the purposes of this Act, the term “business of a non-resident in the territory of the Slovak Republic” shall mean business conducted by a non-resident if its enterprise or an organizational unit thereof are located in the Slovak Republic.

(4) A non-resident shall be entitled to conduct business in the territory of the Slovak Republic starting from the date of registration of its enterprise or an organizational unit thereof into the Companies Register, to the extent of the scope of business recorded therein. The registration request shall be filed by the non-resident concerned.

(5) The authorization of a non-resident to conduct business in the territory of the Slovak Republic shall terminate as of the date of cancellation of the enterprise or organizational unit of such a party from the Companies Register. A request of cancellation shall be filed by the non-resident party.

(6) The provisions of subsection 4 above shall not apply to individuals, who are to be registered in the Companies Register, and who are resident in any of the European Union member States or any of the members States of the Organization for Economic Cooperation and Development and who conduct business in the territory of the Slovak Republic.

(7) In addition to the data referred to in Section 3a above, non-resident parties shall specify, on any business documents pertinent to the enterprise of a non-resident party or its organizational unit, also data concerning the registration of the enterprise or its organizational unit into the Companies Register.

(8) Business documents pertinent to an enterprise of a non-resident party or its organizational unit shall bear the name of a foreign Companies Register or another register, in which the non-resident party is registered, and also data concerning the registration of the non-resident party into such Companies Register or another register, provided that the law of the country, by which the non-resident party is governed, makes the registration in to the Companies Register or another register mandatory.

(9) The data referred to in subsections 7 and 8 above shall be indicated by non-resident parties also in any official correspondence, which is pertinent to their enterprise or an organizational unit thereof.

#### **Section 22**

The Slovak law shall accept the legal capacity of non-residents (other than non-resident individuals) pursuant to the law, under which such a legal entity was established. The law, under which the non-resident entity was established, shall also govern its internal relations and the liability of its partners, members or shareholders for the entity’s obligations.

#### **Section 23**

Non-residents authorized to conduct business abroad shall be regarded as entrepreneurs under this Act.

### **PART II**

#### **EQUITY PARTICIPATION OF NON RESIDENTS IN SLOVAK LEGAL ENTITIES**

#### **Section 24**

(1) Subject to the provisions of this Act, a non-resident may, for the purpose of conducting business, participate in the establishment of a Slovak legal entity or may participate in a Slovak legal entity already established as a partner, member or shareholder. A non-resident may establish a Slovak legal entity on its own, or become a sole partner, member or shareholder of a Slovak legal entity, provided a sole founder or a sole partner, member or shareholder are admitted by this Act.

(2) A Slovak legal entity may only be established under the Slovak law or under the law of the European Communities, unless the law provides otherwise.

(3) As regards matters referred to in subsection 1 above, non-residents shall have the same rights and duties as residents.

### **PART III**

#### **PROTECTION OF PROPERTY OF NON-RESIDENTS CONDUCTING BUSINESS IN THE SLOVAK REPUBLIC**

#### **Section 25**

(1) A non-resident’s property related to the business conducted in the Slovak Republic and the property of a legal entity with foreign shareholding referred to in Section 24 subsection 1 above may only be nationalized in the Slovak Republic and the ownership title thereto may only be restricted by an act of Parliament and in the public interest, provided that there is no other alternative for satisfying such public interest. An appeal may be filed with a court against the decisions above.

(2) If measures are taken pursuant to subsection 1 above, an indemnity must be paid without delay reflecting the full value of the property affected by any such measure at the time of its implementation. The indemnity shall be paid in foreign currency and shall be freely transferable abroad.

(3) International treaties binding upon the Slovak Republic and promulgated in the Collection of Laws shall hereby not be affected.

### **PART IV**

#### **TRANSFER OF THE REGISTERED OFFICE OF A NON-RESIDENT LEGAL ENTITY TO THE SLOVAK REPUBLIC**

#### **Section 26**

(1) A non-resident legal entity established to conduct business may transfer its registered office from abroad to the territory of the Slovak Republic, if so provided by the law of the European Communities, or provided this is admissible under international treaties binding upon the Slovak Republic, which were promulgated as required by the law. The same applies to the transfer of the registered office of a Slovak legal entity to abroad.

(2) The transfer of the registered office under subsection 1 above shall be effective from the day on which it is entered into the Companies Register.

(3) The internal legal relations of the legal entity referred to in subsection 1 above shall keep to be governed by the law of the country under which the entity was originally established, even after the transfer of its registered office to the Slovak Republic. The same law shall regulate the liability of the entity’s partners, members or shareholders vis-a-vis third parties, while such a

liability shall not be lesser than the liability prescribed for the same or similar corporate form by the Slovak law.

### **CHAPTER THREE COMPANIES REGISTER**

#### **Section 27**

(1) The Companies Register shall be a public register containing data prescribed by the law (hereinafter referred to only as “registered data”) and shall comprise a collection of deeds prescribed by the law (hereinafter referred to only as “Collection of Deeds”).

(2) The following parties shall be registered in the Companies Register:

- a) partnerships, companies, cooperatives, sundry legal entities, the registration of which is required by a special act, legal entities established under the law of the European Communities, enterprises and branches of enterprises of non-residents,
  - b) branches and other units of enterprises, if prescribed by a special act,
  - c) individuals permanently resident in the territory of the Slovak Republic and conducting business under this Act, who are registered in the Companies Register upon their request or if their registration is prescribed by a special act.
- (hereinafter referred to only as “registered parties”).

(3) The registered data shall be effective vis-a-vis third parties from the date of their publication. The clauses of documents, the publication of which is prescribed by the law, shall be effective vis-a-vis third parties from the date of publication of a notice of filing of such documents with the Collection of Deeds. The provisions above shall not apply if the registered party submits evidence showing that a third party was aware of such data or of the clauses of such documents. Notwithstanding the above, the registered party shall not be allowed to assert such data or the clauses of such documents vis-a-vis third parties during the 15 days following their publication, provided that the third parties submit evidence showing that they could not have been aware thereof.

(4) If there is any inconsistency between the data, which were registered, and the data, which were published, or between the documents, which were filed and those, which were published, the published data or documents can not be used as evidence vis-a-vis third parties. Third parties may make reference to the published data or documents, unless the registered party submits evidence showing that such third parties were aware of the registered data or of the clauses of documents filed in the Collection of Deeds.

(5) Third parties shall always be free to make reference to the clauses of documents or to the data, which were not yet registered in the Companies Register or filed in the Collection of Deeds, except for cases, in which they become effective only upon their registration into the Companies Register.

(6) Since the date of publication of the fact that a statutory body or its members were registered in the Companies Register, the registered party shall not be allowed to assert, vis -a-vis third parties, a breach of the law, the memorandum of association or the articles of association upon appointment or election of statutory bodies or their members, unless evidence is submitted showing that the third parties were aware of the breach.

(7) If there is any discrepancy between the data and the documents concerning a registered enterprise of a non-resident or a registered branch of an enterprise of a non-resident, which are published in the Slovak Republic, and the data and the documents concerning the non-resident,

which are published in the country, in which the non-resident has its registered office, the data and the documents concerning the enterprise of the non-resident or the branch of the enterprise of the non-resident, which are published in the Slovak Republic, shall be relevant for the purpose of any business with the enterprise of the non-resident or its branch.

#### **Section 28 REGISTERED DATA**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 28a COLLECTION OF DEEDS**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 28b**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 29**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 30**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 31**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 32**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 33**

*Rescinded by the Act 530/2003 Coll.*

#### **Section 34**

*Rescinded by the Act 530/2003 Coll.*

### **CHAPTER FOUR ENTREPRENEUR'S BOOKKEEPING**

#### **Section 35**

Entrepreneurs shall be obliged to keep their accounts to the extent and in the manner prescribed by a special act.

#### **Section 36**

Entrepreneurs registered in the Companies Register (hereinafter referred to only as „registered entrepreneurs“) shall use a double entry bookkeeping system, which shall reflect the balance and the movements of their business assets and liabilities, net business property, costs, revenues and profits or losses.

### **Section 37**

(1) Unless a special act provides otherwise, entrepreneurs, which are not registered in the Companies Register, shall use a single entry booking system to record their receipts and expenditures, business assets and liabilities, in order to allow the determination of their net business property and the result of their operations.

(2) Those entrepreneurs, which are not registered in the Companies Register may, instead of using the single entry booking system, use the double entry booking system, provided they use the same for the entire accounting period.

### **Section 38**

*Rescinded by the Act 510/2002 Coll.*

### **Section 39**

(1) Annual and extraordinary financial statements of joint-stock companies must be audited by an auditor according to special legislation. Other types of partnerships and companies and co-operatives shall be liable to the above only if so prescribed by a special act.

(2) The entrepreneur shall be obliged to prepare and disclose to his auditor all the accounting documents and explanations required for the audit under subsection 1 above.

(3) The expenses associated with the audit shall be borne by the audited entrepreneur.

### **Section 40**

(1) Joint stock companies, limited liability companies, co-operatives and State-owned enterprises shall file their ordinary individual financial statements and extraordinary individual financial statements into the Collection of Deeds after their approval by the respective body. The relevant body of the joint stock company, limited liability company, co-operative and State-owned enterprise shall submit the ordinary individual financial statements and extraordinary individual financial statements for their approval within six months after the last day of the accounting period. Registered parties other than above shall be liable to the above only if so prescribed by a special act.

(2) If a special act requires audit of the financial statements of a registered party by an auditor, the party shall file into the Collection of Deeds the financial statements audited by an auditor together with the auditor's report, as appropriate, and the name and residence of the auditor or the business name, registered office and identification number of the legal entity, which was appointed as auditor, together with the number of the entry of the auditor in the register of auditors. If the auditor is a legal entity, the party shall specify the names and residences of individuals, who performed the audit. If a special act makes the registered party obliged to issue an annual report, and such annual report includes audited financial statements, the financial statements may be filed as part of the annual report.

## **CHAPTER FIVE ECONOMIC COMPETITION**

### **PART I INVOLVEMENT IN ECONOMIC COMPETITION**

### **Section 41**

Individuals and legal entities involved in economic competition, even if they are not entrepreneurs (hereinafter referred to only as „competitors“), shall be entitled both to engage freely in competition with the purpose of achieving economic benefits, and to associate with the purpose above. Notwithstanding the above, they shall be obliged to comply with the legally binding rules of economic competition, and shall not be allowed to abuse their involvement in the economic competition.

### **Section 42**

(1) Unfair competitive conduct (hereinafter referred to only as „unfair competition“) and unlawful restrictions of economic competition shall be regarded as abuse of involvement in the economic competition.

(2) Unlawful restrictions of economic competition are addressed by a special act.

### **Section 43**

(1) Unless international treaties, which are binding upon the Slovak Republic and which have been promulgated in the Collection of Laws provide otherwise, the provisions regarding economic competition shall not be apply to any conduct to the extent, in which the same produces effects abroad.

(2) As to the protection against unfair competition, non-residents conducting business in the Slovak Republic under this Act shall be given equal treatment as residents. Otherwise, non-residents may either seek protection in accordance with international treaties, which are binding upon the Slovak Republic and which have been promulgated in the Collection of Laws, or, if there are none, on the basis of reciprocity.

## **PART II UNFAIR COMPETITION**

### **Section 44 FUNDAMENTAL PROVISIONS**

(1) The term “unfair competition” shall mean any competitive conduct, which is contrary to good manners and which is able to cause damage to other competitors or consumers. Unfair competition shall be prohibited.

(2) Cases of unfair competition include, but not be limited to the following conduct:

- a) misleading advertising,
- b) deceitful description of goods and services,
- c) contributing towards mistaken identity,
- d) parasitic exploitation of a competitor's reputation,
- e) bribery,
- f) discrediting,
- g) disclosure of business secrets,
- h) endangering of health and environment.

### **Section 45 MISLEADING ADVERTISING**

(1) The term “misleading advertising” shall mean advertising of goods, services, immovable

property, business name, trademark, denomination of origin of goods and other rights and obligations in connection with the business, which misleads or may mislead the persons, which are to be addressed thereby or which come into contact with such advertising, and which, due to its false nature, may have impact on the economic behavior of such persons or is or may be to the detriment of another competitor or consumer.

(2) Any considerations concerning misleading advertising shall take into account all of its characteristics, in particular information comprised therein, which relate to:

- a) goods and service, their availability, make, composition, manner and date of production or supply, suitability and method of use, quantity, geographic or commercial origin or results, which may be expected from their use, or results of their tests or controls,
- b) price and method of calculation thereof, and terms, at which goods and services are being supplied or provided,
- c) characteristic features of the competitor propagating the advertising, in particular its identity, qualification, protected industrial rights, intellectual property, awards and distinctions.

#### **Section 46**

##### **DECEITFUL DESCRIPTION OF GOODS AND SERVICES**

(1) Any description of goods and services that may induce the consumers and competitors to assume in error that such goods and services originate in a certain country, a certain area, or are manufactured or provided by a certain producer or provider, or that such goods or services have certain characteristic features, or are of a special quality, shall be considered as deceitful description. It shall be irrelevant whether such a description appeared directly on the goods, labels, packaging, or in business documentation, etc. It shall also be irrelevant whether the deceitful description is disclosed directly or indirectly, and the manner of such disclosure. The provisions of Section 45 subsection 2 above, shall apply *per analogiam*.

(2) Any incorrect description of goods or services, even if accompanied by an addendum such as „the kind“, „the type“, „the method“, in order to distinguish their origin, shall also be treated as deceitful, as long as the description keeps being capable of misleading competitors and consumers as to the origin and characteristics of the goods or services.

(3) The description of goods and services, which is commonly used in business to describe a certain kind or a certain quality of products or services, shall not be treated as deceitful, unless accompanied by an addendum that may imply a mistaken assumption as to their origin, such as the words „genuine“, „original“, etc.

(4) The provisions above shall not affect the rights and duties ensuing from registered origin of goods, trade marks, or protected species of plants or animal breeds, which are regulated by special acts.

#### **Section 47**

##### **CONTRIBUTING TOWARDS MISTAKEN IDENTITY**

The following conduct be treated as conduct contributing towards mistaken identity:

- a) use of a business name or use of a special designation of an enterprise already lawfully used by another competitor,
- b) use of a special designation of an enterprise, a special pattern or design related to products, services, or business documentation, which customers associate with a certain enterprise or plant (e. g. packaging, printed matter, catalogues, advertising materials),

- c) imitation of products or services of another party or its packaging, unless this imitation involves details, which due to the nature of the product are predetermined functionally, technically or aesthetically, and the imitator has taken all the measures which may be required therefrom to avoid or at least to materially restrict the risk of confusion, provided that such a conduct is capable of leading to a confusion with the enterprise, business name, special designation or the products or services of another competitor.

#### **Section 48**

##### **PARASITIC EXPLOITATION OF A COMPETITOR'S REPUTATION**

Exploiting the reputation of another competitor's enterprise, products or services, with the aim of gaining extra benefit for one's own or someone else's business, shall be treated as parasitic exploitation of a competitor's reputation.

#### **Section 49**

##### **BRIBERY**

The term "bribery" as used in this Act, shall mean the following conduct:

- a) if a competitor offers, promises or provides, either directly or indirectly, any benefit to a person who is a member of another competitor's statutory body (or a similar body), or is employed with another competitor (or has a similar status), in order to gain - by means of unfair conduct of such a person - a competitive advantage or any other unauthorized benefit for itself or for another competitor to the detriment of the other competitors, or,
- b) if a person referred to in a) above directly or indirectly solicits or induces to promise or accepts any benefit for the purpose above.

#### **Section 50**

##### **DISCREDITING**

(1) The term "discrediting" shall mean any conduct, by which a competitor discloses or disseminates untrue information concerning the standing, products or services of another competitor, provided that such untrue information is likely to be detrimental to the other competitor.

(2) The term "discrediting" shall include disclosure and dissemination of true information concerning the standing, products or services of another competitor in case such information is likely to be detrimental to the other competitor. Notwithstanding the above, it shall not be treated as unfair competition if a competitor is forced into the conduct above by the prevailing circumstances (legitimate defense) or if it discloses such facts as part of an advertising comparative.

#### **Section 51**

##### **DISCLOSURE OF BUSINESS SECRET**

The term "disclosure of business secret" shall mean any conduct, when the disclosing party unlawfully discloses or makes available or exploits for its own benefit or for the benefit of a third party a business secret (Section 17 above), which may be used for the purposes of competition, and which the disclosing party learned:

- a) by a disclosure of the business secret thereto or by having access thereto otherwise (through technical specifications, manuals, drawings, models, or patterns) due to employment or another relationship with the competitor, or, as appropriate, due to discharging an office, to

- which the disclosing party was appointed by the court or by another authority; or,  
b) by its own unlawful conduct or by unlawful conduct of a third party.

#### **Section 52**

#### **ENDANGERING OF HEALTH AND ENVIRONMENT**

There shall be endangering of health and environment, if a certain competitor violates the economic competition by manufacturing, introducing products onto the marketplace, or by performing services to the prejudice of the lawful interest to protect health and environment, in order to gain benefits for itself or a third party and to the detriment of other competitors or consumers.

#### **PART III**

#### **REMEDIES AGAINST UNFAIR COMPETITION**

#### **Section 53**

Parties, whose rights have been impaired or prejudiced by unfair competition, may demand to refrain from such a conduct and to provide a remedy. In addition to the above, they may demand appropriate relief (that may be granted also in cash), indemnities and the surrender of any unjustified benefits.

#### **Section 54**

(1) The right to demand to refrain from unlawful conduct and to provide a remedy may be exercised (except for cases referred to in Sections 48 through 51 above), in addition to the competitor, also by a legal entity authorized to protect the interests of competitors and consumers.

(2) Upon commencement of proceedings concerning a claim to refrain from unlawful conduct and to provide a remedy, or upon termination thereof by a final and non-appealable decision, actions brought by other authorized parties concerning the same claims, which arose out of the same conduct, shall not be admissible. The above shall not affect the right of such other parties to join the proceedings as subsidiary participants according to the general provisions. Final rulings on such claims concerning the action brought by any one of the claimants, shall be effective also vis-a-vis the other authorized persons.

#### **Section 55**

(1) Upon proposal of any party or *ex officio* the Court may decide to close the hearings held within the framework of the proceedings above to the general public, whenever a public hearing would threaten business secrets or a public interest.

(2) The court may in its ruling adjudge to the winning party the right to publish such a ruling at the expense of the losing party, and, as appropriate, specify also the extent, the form and the terms of publishing of the ruling concerned.



**TITLE TWO  
PARTNERSHIPS, COMPANIES AND CO-OPERATIVES**

**CHAPTER ONE  
PARTNERSHIPS AND COMPANIES**

**PART I  
GENERAL PROVISIONS**

**Section 56**

(1) Partnerships and companies shall be legal entities established for the purpose of conducting business. Partnerships and companies may be established either as a general commercial partnership, a limited partnership, a limited liability company or a joint-stock company. A limited liability company and a joint-stock company may also be established for purposes other than the conduct of business, unless prohibited by a special act.

(2) Legal entities established under the law of the European Communities shall have status similar to the status of partnerships and companies.

(3) Both individuals and legal entities may be founders of partnerships and companies and participate in their business, unless this Act provides otherwise.

(4) Those activities, which can only be carried out by individuals pursuant to special legislation, may be carried out by a partnership or a company only through the persons, which are authorized thereto pursuant to special legislation. The liability of such persons under special legislation shall hereby not be affected.

(5) An individual or a legal entity may hold status of partner with unlimited liability in one partnership only.

(6) The provisions concerning the individual corporate forms of partnerships and companies shall set forth the extent of the liability of partners, members and shareholders for their partnership's or company's obligations. The provisions concerning liability (Section 303 et seq. below) shall apply, *per analogiam*, to the liability of partners, members and shareholders, unless other provisions of this Act imply otherwise. If a bankruptcy order is made against the property of the partnership or the company, the partners, members and shareholders shall be liable only for those partnership's or company's obligations, with respect to which proofs have been filed by the creditors in due time, and which have not been settled within the framework of the bankruptcy proceedings.

(7) Following the deletion of the partnership or company, its partners, members and shareholders shall be liable for their partnership's or company's obligations up to their share of the liquidation balance (Section 61 subsection 4 below), however at least to the extent of their liability therefore during the partnership's or the company's existence. The partners, members and shareholders shall settle their mutual rights and duties as if the partnership or the company continued to exist.

**Section 56a**

(1) It is not allowed to abuse the rights of partner, member or shareholder, mainly to abuse the majority or the minority of votes in a partnership or a company.

(2) Any conduct, which penalizes any of the partners, members or shareholders in an abusive manner, shall be forbidden.

**Section 57**

**ESTABLISHMENT OF A PARTNERSHIP OR A COMPANY**

(1) A partnership or a company shall be established by a memorandum of association executed by every founder, unless other provisions of this Act provide otherwise. The signature of the founders must be officially authenticated.

(2) The memorandum of association may also be executed by a person authorized to do so by the founder. The power of attorney containing an officially authenticated signature of the founder shall be attached to the memorandum of association.

(3) In cases, in which this Act permits the establishment of a partnership or a company by one founder only, the memorandum of association shall be replaced by an establishment deed. The establishment deed must include the same essentials as the memorandum of association or the founders' deed.

**Section 58**

**REGISTERED CAPITAL**

(1) A partnership or a company's registered capital shall be equal to the aggregate contributions in cash and in kind pledged by all the partners, members, or shareholders and expressed in money terms.

(2) Both limited liability companies and joint-stock companies shall be obliged to establish the registered capital. Its amount shall be registered into the Companies Register.

**Section 59**

**CONTRIBUTIONS PLEDGED BY PARTNERS, MEMBERS AND SHAREHOLDERS**

(1) The term "contribution" of a partner, member and shareholder to the partnership or the company shall mean the aggregate cash (hereinafter referred to only as "contribution in cash") or other property, which can be expressed in money terms (hereinafter referred to only as "contribution in kind"), which is contributed to the partnership or company and which entitle the partner, member or shareholder to share the results of the partnership or the company's business.

(2) Only that property may be contributed as a contribution in kind, the economic value of which can be determined. Contributions consisting of a commitment to carry out certain works or to provide certain services are not allowed. The contribution in kind must be transferred to the company prior to the registration of the registered capital into the Companies Register. If the company or the partnership fail to acquire the ownership title to a property to be transferred thereto as a contribution in kind, the partner, member or shareholder, which pledged such a contribution, shall be obliged to pay to the partnership or to the company the value of the property in cash, while the partnership or the company shall be obliged to surrender the property to the partner, member or shareholder. The partnership or the company shall send a written notice asking to pay the value of the contribution in kind, the title to which should have been and was not acquired by the partnership or the company, and the partner, member or shareholder shall fulfill such a duty within 90 days from the receipt of the notice above.

(3) A description of the contribution in kind and its value in money terms (which shall be set off against the pledged contribution of the partner, member or shareholder) must be specified in the memorandum of association, in the founders' deed or in the establishment deed, unless this Act provides otherwise. The value of the contribution in kind shall be determined by an official appraiser. The appraisal must contain a description of the contribution in kind, the method of its appraisal and a determination, whether the value of the contribution corresponds to the issue

price of the subscribed shares, which are to be paid up by such a contribution, or to the value of the pledge to make the contribution to the partnership or company undertaken by the subscriber.

(4) If the contribution consists of an enterprise or a part thereof, the provisions on the contract of sale of an enterprise shall apply, *mutatis mutandis*, as regards the transfer of rights and obligations.

(5) If the contribution or a fraction thereof comprises the assignment of a claim, the provisions concerning assignment of claims shall apply *mutatis mutandis*. The partner, member of shareholder, which assigned (as a contribution) a claim to the partnership or to the company, shall be liable for the recovery of such a claim, up to the value of its pledged contribution. A debt receivable from the partnership or the company may also be contributed as a contribution in kind.

(6) If at the time of registration of the registered capital into the Companies Register the value of the contribution in kind is lower than the amount determined at the time, when the contribution was pledged, the partner, member of shareholder, which pledged the contribution in kind, shall pay the difference in cash to the partnership or the company.

#### **Section 59a**

(1) If a company acquires property under an agreement entered into with their founder, member or shareholder against consideration equal to not less than 10% of the registered capital, the value of the property must be determined by an official appraiser. Such an agreement shall not be effective prior to its filing into the Collection of Deeds together with the appraisal. If the agreement must be registered in a separate register pursuant to a special act in order to be effective, the agreement together with the appraisal must be filed into the Collection of Deeds prior to its registration into the separate register above.

(2) If the company enters into the agreement referred to in subsection 1 above within two years from the date of its incorporation, a prior approval thereof by the general meeting shall be required.

(3) The provisions of subsection 1 and 2 above shall apply, *mutatis mutandis*, also to agreements, which are entered into between the company and parties, which are regarded as close parties of founders, members or shareholders thereof, or which have control or are controlled by the founders, members or shareholders, always provided that the company acquires property against a consideration of not less than 10% of their registered capital.

(4) The provisions of subsections 1 through 3 above shall not apply to agreements made in the ordinary course of business, to the acquisition of property made under a decision of a court or public administration authority and to property acquired at stock exchanges at a price equal to the quotation corresponding to the demand and offer prevailing at that time.

(5) The provisions of subsections 1 through 4 above shall apply to limited liability companies and joint stock companies only.

#### **Section 60 CUSTODY OF CONTRIBUTIONS**

(1) Those fractions of contributions of partners, members or shareholders which were paid up prior to the registration of the partnership or the company into the Companies Register, shall be in the custody of the founder entrusted thereto in the memorandum of association (hereinafter referred to only as “constructions custodian”). The memorandum of association may entrust the custody of the contributions also to a bank or a branch of a non-resident bank (hereinafter

referred to only as “bank”), even if it is not one of the founders. The partnership or the company shall acquire the ownership title (or other rights as appropriate) to the contributions or fractions thereof paid up prior to the registration of the partnership or the company into the Companies Register as of the day of their incorporation. However, the company or the partnership shall acquire the ownership title to real estate only upon registering the ownership title into the Register of Real Estate, against a written statement executed by the contributing partner, member or shareholder. The signature on the statement must be officially authenticated. In case the transfer of the title to the contribution in kind requires its registration into a separate register pursuant to a special act, the statutory body of the partnership or the company shall file a request of registration of the ownership title into such a register within 15 days from the date of incorporation of the partnership or the company.

(2) If the contribution in kind consists of immovable property or an enterprise (or a part thereof), which comprises immovable property, the contributing partner, member or shareholder must hand over to the contributions custodian the written statement referred to in subsection 1 above prior to the filing of the request of registration of the partnership or the company into the Companies Register. The contribution shall be deemed to be paid up upon handing over the statement above to the custodian.

(3) Following the partnership’s or the company’s incorporation, the contributions custodian shall be obliged to hand the contributions over to the partnership or the company without undue delay. In case of failed incorporation of the partnership or the company, the contributions custodian shall be obliged to surrender the contributions back to the founders. The other founders shall bear liability for the fulfillment of the obligation above jointly and severally.

(4) The contributions custodian under subsection 1 above shall be obliged to produce a written statement concerning the fractions of contributions paid-up by the individual partners, members or shareholders. Such a statement shall be attached to the request of registration of the partnership or the company into the Companies Register. If the contributions custodian specifies, in the statement above, a figure higher than the amount actually received, it shall be liable towards the partnership or the company for the fulfillment of the duty to pay up the contributions pledged by the partners, members or shareholders up to the amount of such a difference, and it shall be liable towards the partnership’s or the company’s creditors for the liabilities of the partnership or the company, up to the difference above. The contributions custodian shall be discharged of its liability towards the creditors of the partnership or the company upon payment of the contributions concerned.

#### **Section 61 SHARE**

(1) A share shall be the pro rata participation of a partner, member or shareholder in the partnership’s or the company’s net business property.

(2) Upon termination of their participation in the partnership or the company for the term of their existence, partner, member or shareholder shall be entitled to the payment of a share (hereinafter referred to only as “settlement share”). The amount of the settlement share shall be determined with reference to the ordinary individual financial statements for the accounting period preceding the one, in which the partner, member or shareholder terminated their participation in the partnership or the company, unless the memorandum of association provides otherwise. The settlement share shall be paid in cash, unless the law, the memorandum of association or the articles of association provide for the terms of payment other than above.

(3) The settlement share shall be due for payment to the partner, member or shareholder within three months after the date of approval of the ordinary individual financial statements, unless the memorandum of association or the articles of association provide otherwise. If the partners, members, shareholders, or the relevant body of the partnership or the company fail to approve the financial statements without there being any serious grounds, the settlement share shall be due for payment on the last day of the third month after the date, on which the financial statements should have been approved.

(4) In the event of winding-up of a partnership or a company, which is accompanied by the partnership or the company's liquidation, a partner, member or shareholder shall be entitled to receive a pro rata share of the liquidation balance.

#### **Section 62 COMPANY'S INCORPORATION**

(1) A partnership or a company shall be incorporated on the date of their registration in the Companies Register. The request of registration in the Companies Register must be filed not later than 90 days after the partnership's or the company's establishment (Section 57 above) or after the receipt of a proof of existence of a trading license or a similar authorization.

(2) Unless it is expressly agreed upon establishment that the partnership or the company would be established for a definite period of time, the partnership or the company shall be deemed to be established for indefinite period of time.

#### **Section 63**

Any action at law related to the establishment, incorporation, amendment, winding-up or deletion of a partnership or a company must be executed in writing; the law prescribes the actions at law, which must have form of a notarial deed.

#### **Section 64 CONDUCT ON BEHALF OF THE PARTNERSHIP OR COMPANY PRIOR TO ITS INCORPORATION**

(1) Persons, who act on behalf of the partnership or company prior to their incorporation, shall be liable jointly and severally for their actions. If the partners or the competent body approve such actions taken on behalf of the partnership or company within three months from the date of incorporation of the partnership or company, the partnership or the company shall be deemed to have incurred liabilities out of the actions above since the date, on which the actions were taken.

(2) The partnership or the company shall not take over liabilities other than those, which are associated with their incorporation and which are binding upon the founders or the statutory body or the members thereof, and other than liabilities, which were taken over by the partnership or the company on a condition precedent affecting the effectiveness of the actions at law and consisting in subsequent approval of such actions by the partners or the respective body of the partnership or the company. Parties, which incurred, on behalf of the partnership or the company, liabilities other than above, shall be liable for any damage so caused and shall be bound by such actions personally.

(3) Persons, who acted on behalf of the partnership or the company prior to their incorporation, shall draw a list of actions at law to be approved by the partnership or the company so that they may be approved by the date under subsection 1 above. If their breach of the duty above causes any damage, they shall be liable towards the creditors jointly and severally.

(4) The statutory body or its members shall, without undue delay, give notice to the business partners informing of the approval of any actions at law, which were taken prior to the incorporation of the partnership or the company.

#### **Section 65 BAN ON COMPETITIVE CONDUCT**

(1) The provisions concerning the individual corporate forms of partnerships and companies shall determine which persons and to what extent shall be subject to the ban on competitive conduct.

(2) A partnership or a company may demand that any person in breach of the ban above surrender any profit accruing from the business transaction that resulted in the breach, or to transfer the rights ensuing from such a transaction to the partnership or the company. The right to indemnity shall hereby not be affected.

(3) The partnership's or the company's rights under subsection 2 above shall become time-barred if not exercised within three months from the day, on which the partnership or the company learned thereof, but not later than one year from the date, on which the breach occurred. The right to indemnity shall hereby not be affected.

#### **Section 66**

(1) If a person, who is the sole statutory body, member of the statutory body of a partnership or a company or member of the supervisory board of a company (hereinafter referred to only as "member of a body") resigns from his office, is removed from his office or passes away or the term of his office terminates otherwise, the respective body of the partnership or the company must replace the terminating member by a new one within three months.

(2) Unless the law, the memorandum of association or the articles of association provide otherwise, the resignation shall be effective on the date of the first meeting of the body, which has the authority to remove and appoint the respective member, which is held following the receipt of the resignation notice. If the body, which is authorized to appoint or elect the new member, fails to hold a meeting within three months after receipt of the resignation notice, the resignation shall be effective on the first day following the expiration of the term above. If the member of the body resigns directly at a meeting of the body, which has the authority to remove and appoint the respective member, the resignation shall have immediate effects. Unless the law, the memorandum of association or the articles of association provide otherwise, the removal shall be effective upon taking of a decision by the respective body of the partnership or the company. If there is any threat of damage, the member of a body, who resigned from his office, was removed or whose term of office terminated otherwise, shall warn the partnership or the company of measures to be taken in order to avoid any such a damage.

(3) The relations between the partnership or the company on one side and a member of its body or its partner, member or shareholder on the other side, which arise out of the business of the partnership or the company, shall be governed by the provisions concerning the mandate agreement *mutatis mutandis*, unless the law or an agreement, if any, entered into between the partnership or the company on one side and the member of its body on the other side, which regulates the terms and conditions of the office, determine the rights and duties otherwise. The agreement above must be made in writing and must be approved by the general meeting of the partnership or the company, or by all the partners with unlimited liability for the obligations of the partnership. The articles of association of a joint stock company may provide that

agreements concerning offices of directors shall be approved by the supervisory board.

(4) Unless the law, the memorandum of association or the articles of association provide otherwise, the statutory body or the supervisory board may pass resolutions only if their meetings are attended by the majority of votes of their members, while any such resolutions require the approval of a majority of the attending members. The memorandum of association or the articles of association may provide that votes may be cast outside a meeting of the body, either in writing or using other communication means. The members, who cast their votes, shall be regarded as if they were attending the meeting.

#### **Section 66a**

##### **CONTROLLED AND CONTROLLING PARTY**

(1) The controlled party is a company or partnership in which a certain party owns the majority of the voting rights since it has an interest on the company or the partnership or holds shares of the company, to which the majority of the voting rights are attached or since it has entered into agreements with other authorized parties and may thus exercise most of the voting rights, regardless whether such agreement is valid or not (Section 186a below).

(2) The controlled party is the party controlled by the controlling party as provided in subsection 1 above.

(3) The percentage of the voting rights pursuant to subsection 1 above shall be increased by any voting rights:

- a) attached to the interest on the controlled party or to the shares of the controlled party, which are owned by other parties controlled directly or indirectly by the controlling party,
- b) exercised by other parties in their own name and for the account of the controlling party.

(4) The percentage of the voting rights under subsection 1 above shall be reduced by the voting rights attached to the interest on the controlled party or to the shares of the controlled party, if

- a) the controlling party exercises such voting rights for the account of a party other than the party thereby controlled directly or indirectly or a party controlling it,
- b) such interest or shares are transferred to the controlling party as security and the controlling party must abide, at the exercise of the voting rights thereby, by the instructions of the party, which issued the security.

#### **Section 66b**

##### **ACTION TAKEN IN CONCERT WITH OTHER PARTIES**

Such actions shall be taken in concert with other parties, which are leading to the achievement of the same goal and are taken between:

- a) a legal entity and its partners, members or shareholders, its statutory body, members of its statutory body, members of its supervisory body, staff of the legal entity, who are directly controlled by the statutory body or a member thereof, procurator, liquidator, trustee in bankruptcy, arrangement trustee of such a legal entity and parties related thereto or between either two of the parties above,
- b) parties, which entered into an agreement concerning uniform exercise of voting rights in one company in any matters concerning the management thereof.
- c) controlling party and controlled party or between parties controlled directly or indirectly by the same controlling party.

#### **Section 67**

#### **RESERVE FUND**

(1) If this Act requires the establishment of a reserve fund, the fund may only be used, to the extent, in which it must be established according to this Act, to cover the partnership's or the company's losses, unless a special act provides otherwise.

(2) Unless the law requires establishment of a reserve fund upon incorporation of a partnership or company, limited liability companies and joint stock companies shall be obliged to establish a reserve fund out of the profit for the current accounting period appearing in the approved ordinary individual financial statements (hereinafter referred to only as "net profit"). The reserve fund may be established earlier, upon incorporation of the company or upon increase of its registered capital through additional payments by members or shareholders in excess of their contributions or the nominal value of their shares.

(3) The share of the partners, members and shareholders on the partnership's or the company's profit may only be determined after having made appropriations to the reserve fund in accordance with this Act, the memorandum of association or the articles of association.

#### **Section 68**

##### **WINDING-UP AND DELETION OF A PARTNERSHIP OR A COMPANY**

(1) A partnership or a company shall cease to exist on the date on which it is deleted from the Companies Register.

(2) The partnership's or the company's deletion from the Companies Register shall be preceded by its winding-up either with or without liquidation (in case all its assets and liabilities are transferred to a successor-in-law). The liquidation shall neither be required if the partnership or the company do not own any property or if a petition in bankruptcy is dismissed due to the lack of property or the bankruptcy proceedings are abandoned since the property of the bankrupt debtor was not sufficient to cover the expenses and the fee of the trustee in bankruptcy, or if there is no property left after the termination of the bankruptcy proceedings.

(3) A partnership or a company shall be wound up:

- a) upon expiration of the term, for which it was established;
- b) on the date specified in a decision of partners, members or shareholders or of a body of the partnership or the company to wind up the same, or, if no date is specified, on the date on which such a decision was taken;
- c) on the date specified in the decision of the court to wind up the partnership or the company, or, if no date is specified, on the date on which such a decision became final and non-appealable,
- d) upon termination of the bankruptcy proceedings, following the implementation of the distribution scheme or upon abandonment of the bankruptcy proceedings since the property of the bankrupt debtor was not sufficient to cover the expenses and the fee of the trustee in bankruptcy, or upon dismissal of the petition in bankruptcy due to the lack of property,
- e) on other grounds, if so provided by a special act.

(4) If there is any property left after the termination of the bankruptcy proceedings, the liquidation of the partnership or the company shall be carried out. If there is no property left after the termination of the bankruptcy proceedings or if the bankruptcy proceedings are abandoned since the property of the bankrupt debtor was not sufficient to cover the expenses and the fee of the trustee in bankruptcy, or if the petition in bankruptcy is dismissed due to the lack of property, the court shall delete the partnership or the company from the Companies Register by its final and non-appealable decision.

(5) If the partnership or the company are wound up with liquidation and the liquidation is carried out by persons other than the members of their statutory body, or if a bankruptcy order is made against the property of the partnership or the company or a compulsory receiver is appointed, the statutory body shall exercise its powers only to the extent, in which the powers are not transferred to the liquidator, trustee in bankruptcy or compulsory receiver. If no liquidator is appointed or if the term of his office expires and no new liquidator is appointed, the statutory body shall pursue the liquidation up to the date of appointment of the liquidator.

(6) Upon proposal of a public authority or a person who has shown to have legal interest or even *ex officio* the court shall order the winding-up of a company or a partnership in the following instances:

- a) no general meeting has been held in that calendar year or the bodies of the partnership or the company have not been appointed within three months,
- b) the partnership or the company cease to be authorized to conduct business;
- c) the conditions required by the law for the incorporation of the partnership or the company cease to be satisfied,
- d) the partnership or the company fail to establish or replenish the reserve fund in compliance with this Act,
- e) the partnership or the company are in breach of the provisions of Section 56, subsection 3,
- f) the partnership or the company failed to file its individual financial statements with the Collection of Deeds for two or more consecutive accounting periods.

(7) If a court decides the winding up of a partnership or a company on the grounds set out in subsection 6 above, prior to taking the decision to wind up the partnership or the company the court shall assign a time period to remove the grounds, due to which the partnership's or the company's winding-up has been proposed, if such a remedy is possible.

(8) Prior to passing the decision to wind up the partnership or the company, the court shall find out, whether the partnership or the company hold any property. If it is find out that there is property, which is sufficient to refund reasonable expenses and to pay a fee to a liquidator, the court shall decide to wind-up the partnership or the company and shall order its liquidation.

(9) If prior to passing the decision to wind up a partnership or a company the court finds out that there is no property, which would be sufficient to refund reasonable expenses and to pay a fee to a liquidator, it shall decide to wind up the partnership or the company without its liquidation. If the partnership or the company is in default in its duty under subsection 6f) above, the court shall treat the partnership or the company as not having any property, which would be sufficient to refund reasonable expenses and to pay a fee to a liquidator, unless a proof to the contrary is submitted. After the decision to wind-up the partnership or the company without liquidation becomes final and non-appealable, the court shall cancel the partnership or the company from the Companies Register.

(10) If a request of cancellation from the Companies Register is filed by a partnership or a company, it shall attach to such a request an approval of the tax administration; the above shall not apply if the partnership or the company is to be wound up without its liquidation. The approval above must be requested by the partnership or the company from the tax administration.

(11) The partners, members or shareholders or the respective body of the company may withdraw their decision to wind up and liquidate the partnership or the company, but not later than the time of distribution of the liquidation balance. On the effective date of the withdrawal the term of office of the liquidator shall terminate and the liquidator shall surrender any and all

the documents concerning the liquidation to the statutory body of the partnership or the company.

#### **Section 68a**

##### **VOID PARTNERSHIP OR COMPANY**

(1) Following the incorporation of the partnership or the company, no party shall seek a decision determining that the partnership or the company never existed.

(2) A court may declare the partnership or the company void and order their liquidation only in the following instances:

- a) no memorandum of association, founders' deed or establishment deed were executed, or the form required by the law for such actions at law was not complied with,
- b) the scope of business or activities is in contrast with the law or good manners,
- c) the memorandum of association, founders' deed, establishment deed or articles of association fail to specify such details as the business name of the partnership or the company, the contributions of the individual partners, members or shareholders, or the registered capital, scope of business or scope of activities, where prescribed by the law,
- d) the memorandum of association, founders' deed, establishment deed or articles of association fail to comply with the provisions of the law concerning minimum fractions of the contributions to be paid up,
- e) none of the founders had capacity to take actions at law,
- f) there are less than two founders, if this is in contrast with the law.

(3) Any rights and duties, which were incurred by the void partnership or company shall not be affected by the decision of the court, by which it is declared void. The duty of the partners, members or shareholders to pay up their contributions shall survive, if this is necessary for the creditors of the void partnership or company to recover their claims.

#### **Section 69**

##### **WINDING UP OF A COMPANY OR A PARTENRSHIP WITHOUT LIQUIDATION**

(1) In case of voluntary winding up of a partnership or a company, it may be simultaneously decided that it would be taken over, merged or split. This shall not affect any restrictions stipulated by law.

(2) Upon merger, takeover or split of a partnership or a company, the partnership or the company to be deleted must have the same corporate form as the partnership or the company, which takes over the assets and liabilities of the deleted partnership or company (hereinafter referred to only as "successor"), unless the law provides otherwise.

(3) The "takeover" shall be a transaction, in which one or several partnerships or companies are wound up without their liquidation, while the assets and liabilities of the partnerships or companies to be deleted are transferred to another, already existing partnership or company, which becomes the successor-in-law of the deleted partnerships or companies. The "merger" shall be a transaction, in which to or several partnerships or companies are wound up without their liquidation, while the assets and liabilities of the partnerships or companies to be deleted are transferred to another newly established partnership or company, which shall become, upon its incorporation, the successor-in-law of the deleted partnerships or companies.

(4) The "split" is a transaction, in which a partnership or a company is wound up without its liquidation, while the assets and liabilities of the partnership or company to be deleted shall be transferred to another, already existing partnership or company, which thus becomes the

successors-in-law of the deleted partnership or the company (hereinafter referred to only as “split by takeover”) or to newly established companies, which shall become, upon their incorporation, the successors-in-law of the deleted partnership or company. Each of the successors shall be liable with its entire property for the obligations, which have been transferred, as a result of the split, from the deleted partnership or company to the other partnerships or companies, while such a liability shall be joint and severable. Creditors may claim payment in full from any of such successors, while upon the settlement of the debt by any of the successors, the liability of the other successors shall be extinguished. The successors shall then settle their mutual claims pro rata to the net business property of the wound-up partnership or company transferred thereto. If the decision ordering the split fails to specify, which of the successors is to acquire a specific fraction of the assets, such a fraction of the assets shall be co-owned by all the successors, while the shares of the successors shall be determined pro rata to the net business property of the wound-up partnership or company transferred thereto.

(5) The partners, members or shareholders of a partnership or a company, which was deleted due to its merger, takeover or split, shall become, upon the deletion thereof, partners, members or shareholders of the successor entity, unless the law, the merger agreement or the takeover agreement provide otherwise.

(6) Any merger or takeover requires the approval of the merger or takeover agreement, which must include, but not be limited to the following details, unless the law provides otherwise:

- a) business names, registered offices and identification numbers (if any) of the merged or taken over partnerships or companies. In case of a merger, also the corporate form, business name and registered office of the successor partnership or company,
- b) shares of the partners, members or shareholders of the partnership or company to be deleted on the successor partnership or company or, as appropriate, their contributions on the successor partnership or company,
- c) draft of the memorandum of association or establishment deed and articles of association of the successor partnership or company (in case of a merger),
- d) specification of the date, starting from which any actions of the partnership or company to be deleted shall be regarded, from the accounting point of view, as actions taken for the account of the successor partnership or company,
- e) specification of the date, starting from which the partners, members or shareholders of the partnership and companies to be deleted shall be entitled to share the profits of the successor partnership or company,
- f) identification of the members of the statutory body (or the supervisory board, as appropriate) of the successor company, in case the merger results in the establishment of a limited liability company or a joint stock company.

(7) The merger or the takeover agreement must be approved by all the partners, members or shareholders of the partnerships or companies to be deleted, and, in case of a takeover, also by the partners, members or shareholders of the successor entity, unless the law or the memorandum of association of such partnerships or companies provide otherwise.

(8) The merger or the takeover agreement may provide that certain of the partners, members or shareholders of the partnerships or companies to be deleted would not become partners, members or shareholders of the successor entity, while the successor would pay a settlement share thereto. The approval of the affected partners, members or shareholders shall be required for the arrangement above to be valid.

(9) The split of a partnership or company requires the approval of a split project. The split

project must contain a detailed description and specification of the assets and liabilities of the partnership or company to be deleted, which are to be transferred to the individual successors, together with the rules of distribution of the shares in the individual successors among the partners, members or shareholders. The provisions of subsections 6 through 8 above shall apply to the clauses of the split project and its approval, *mutatis mutandis*.

(10) In case the takeover or a split by takeover requires amendments to the memorandum of association or articles of association of the successor, without such amendments being incorporated into the takeover agreement or into the split project, the successor must approve the same together with the approval of the takeover agreement or the split project. The provisions of subsection 7 above shall apply to the decisions concerning the amendments to the memorandum of association or articles of association.

### Section 69a

(1) The merger, takeover and split of a partnership or a company shall be effective upon their registration into the Companies Register. Upon such a registration:

- a) the assets and the liabilities of the partnership or company to be deleted pass over to the successor,
- b) the partners, members and shareholders of the partnership or company to be deleted become partners, members and shareholders of the successor, subject to the provision of Section 69 subsection 8 above,
- c) the partnerships and the companies to be deleted upon merger, takeover or split shall be deleted,
- d) the successors arising out of merger or split shall be incorporated.

(2) The deletion of the wound-up partnership or company and the incorporation of the partnership or the company ensuing from a merger or a split shall be made in the Companies Register on the same day. The deletion of the wound-up partnership or company and the registration of the takeover or split by takeover with respect to the successor shall also be made on the same day.

(3) If there is a merger, takeover or split of partnerships or companies, the following data shall be registered in the Companies Register:

- a) with respect to each of the partnerships or companies to be deleted, the fact that they were deleted as a result of merger, takeover or split, together with the business name, registered office and identification number of the successor or all the successors,
- b) in case of merger or split, with respect to each newly incorporated successors, in addition to the data normally registered upon incorporation, also a note that the partnership or the company ensues from a merger or a split, together with the business names, registered offices and identification numbers of all the partnerships and companies, which were deleted as a result thereof,
- c) in case of takeover or split by takeover, with respect to each successor a note that it is a successor, together with the business names, registered offices and identification numbers of all the partnerships and companies, which were deleted as a result thereof.

(4) A request of registration of merger, takeover or split into the Companies Register shall be filed in parallel by all the partnerships and companies to be deleted and by their successors. The persons authorized to file the request above and to act on behalf of the successors in all the matters pertinent to their incorporation, shall be the members of the statutory bodies of the newly incorporated partnerships or companies, who are identified in the approved merger agreement or

in the split project.

**Section 69b**  
**REORGANIZATION (CHANGE OF CORPORATE FORM)**

- (1) A partnership or a company may change their corporate forms and reorganize into another form of partnership, company or co-operative, unless the law provides otherwise. The partnership or the company shall not cease to exist as a legal entity due to change of its corporate form.
- (2) The decision concerning the change of corporate form requires the approval of all the partners, members or shareholders, unless the law or the memorandum of association provide otherwise.
- (3) A decision to change the corporate form shall include, but not be limited to the following details:
  - a) business name, registered office and identification number of the partnership or the company prior to the reorganization,
  - b) corporate form and business name of the partnership or the company following the reorganization,
  - c) shares of partners, members or shareholders on the partnership or the company, or, as appropriate, their contributions made to the partnership or the company following the reorganization. If the reorganized entity is a joint stock company, also the shape, class, form, nominal value and number of shares to be held by the shareholders following the reorganization,
  - d) draft of the memorandum of association or, as appropriate, the articles of association following the reorganization,
  - e) if the reorganized company is a limited liability company or a joint stock company, identification of persons, who shall be the statutory body or members of the statutory body or the supervisory board following the reorganization. The identification of the members of the board of directors of the joint stock company shall not be required if the reorganized entity is a joint stock company, the board of directors of which is to be appointed by the supervisory board according to its articles of association.
- (4) If the reorganization involves a joint stock company or a limited liability company, the statutory body shall prepare a written report explaining and justifying, from the legal and financial points of view, the proposed change of the corporate form. The report must be available for its review by the members or shareholders in the registered office of the company for the term, which is not shorter than the term prescribed by the law, the memorandum of association or the articles of association for the sending of notices of or invitations to the general meeting. The provisions of Section 218c subsection 4 below shall apply *mutatis mutandis*. The supervisory board, if any, shall review the report of the statutory body and shall attach its opinion to the proposal of change of corporate form.
- (5) If the partners, members or shareholders agree so, the participation on the partnership or the company of some of them may terminate as of the effective date of the reorganization, while the partnership or the company would pay them a settlement share. If the law or the memorandum of association do not require unanimous approval of partners, members or shareholders for passing a decision concerning change of the corporate form pursuant to subsection 3 above, the provisions of Section 218j below shall apply *mutatis mutandis*, while the term “successor” would mean the partnership or the company following its reorganization.

(6) The change of the corporate form does not require entering into a separate memorandum of association or founders’ deed and the approval of the articles of association.

(7) The change of the corporate form shall only be effective upon registration of the change into the Companies Register. Upon such a registration, the partnership, company or co-operative shall exist in its new corporate form.

(8) If the company to be reorganized is a limited liability company or a joint stock company and if following its reorganization there is no registered capital or there is a lower registered capital than prior to the change of the corporate form, the statutory body of the company shall give notice of the reorganization, within 30 days from the effective date thereof, to all the known creditors of the company, the claims of which towards the company arose prior to the date of publication of the notice of registration of the change of corporate form, and publish such a notice twice, with the interval of at least 30 days in between. In the notice the creditors shall be invited to file proofs of their claims, which they have towards the company, and which were not due for payment as of the effective date of change of the corporate form. The provisions of Section 215 subsection 3 below shall apply *mutatis mutandis*. Following the reorganization of the company, the members or the shareholders shall not be made any payment in connection with the change of the corporate form and shall not be paid any dividends prior to the expiration of the time periods referred to in Section 215 subsection 3 below, unless all the creditors of the company, which filed proof of their claims in due time in accordance with Section 215 subsection 3 below, are issued adequate securities. The provisions of Section 215 subsection 6 below shall apply *mutatis mutandis*.

**LIQUIDATION OF A PARTNERSHIP OR A COMPANY**

**Section 70**

(1) Unless all the property of the partnership or company is transferred to its successor -in-law (Section 69 above), its liquidation shall be carried out pursuant to this Act, unless the law provides otherwise.

(2) A partnership or a company shall enter into liquidation on the date of their winding -up, unless the law provides otherwise. The liquidation of a partnership or a company shall be registered into the Companies Register. During the liquidation, the business name of the partnership or the company shall be supplemented with an addendum „in liquidation“.

(3) Upon the appointment of the liquidator, the powers of the statutory body to act on behalf of the partnership or the company shall be transferred thereto, as provided in Section 72 below. If several liquidators are appointed and their appointment does not specify otherwise, each of the liquidators shall have the powers above.

**Section 71**

(1) The liquidation shall be carried out by the statutory body of the partnership or the company, which shall be referred to as liquidator, unless the law, the memorandum of association, the establishment deed or the articles of association provide otherwise. If there is no statutory body or if there is no member thereof or if no liquidator has been appointed without undue delay, he shall be appointed by the court. A special act may determine the parties entitled to propose the appointment of a liquidator to the court. The court may appoint as liquidator any of the partners, member or shareholders or the statutory body or any of its members even without their approval. The court shall not appoint as liquidator a party, which can not discharge such an office pursuant

to special legislation. A partner, member, shareholder, the statutory body or its member, who were appointed by the court as liquidators, can not resign from their offices. Notwithstanding the above, they may propose to the appointing court to remove them from the office of liquidator, if they can not be reasonably requested to discharge the same. If the liquidator is a legal entity, the powers of the liquidator shall be exercised on its behalf by its statutory body or members of its statutory body jointly, unless the legal entity designates another individual, who shall exercise the powers of liquidator on its behalf.

(2) In case of winding up of a partnership or a company by a decision of the court, the court shall appoint a liquidator as provided in subsection 1 above.

(3) In case of termination of the office of liquidator due to his decease or due to other grounds, a new liquidator shall be appointed in the same manner as his predecessor.

(4) If no liquidator may be appointed as provided in subsection 1 above, the liquidator shall be appointed by a court from among the persons registered in the Register of Estate Administrators kept pursuant to special legislation.

(5) A liquidator, who has been appointed by the court, may resign from his office in writing. The resignation of the liquidator shall be effective on the date of receipt of the notice of resignation by the partnership or the company. If the interruption of the liquidation might result in a damage to the partnership or the company, the resigning liquidator shall be obliged to advise the partnership or the company of any steps to be taken in order to avert such a damage. If the partnership or the company fail to appoint a new liquidator without undue delay, he shall be appointed by the court. There is no need to appoint a new liquidator if at least one of the previously appointed liquidators keeps discharging his duties.

(6) Irrespective of the manner of the liquidator's appointment, the court may remove the liquidator in breach of his duties upon proposal of a person, who has shown to have legitimate interest. The court shall appoint another person to replace the removed liquidator.

(7) A liquidator shall be liable for discharging his office to the extent of liability of a member of a statutory body.

(8) The request of registration of details concerning the liquidator into the Companies Register or, as appropriate, of deletion of the current liquidator from the Companies Register, shall be filed by the appointed liquidator(s). If the liquidator is appointed by the court, it shall register his details into the Companies Register *ex officio*.

#### **Section 72**

(1) A liquidator shall only undertake those actions on behalf of the partnership or the company, which lead to the partnership's or the company's liquidation. When discharging his office, the liquidator shall settle the partnership's or the company's obligations, file claims and accept the settlement thereof, represent the partnership or the company in front of courts and other authorities, and conclude conciliatory agreements and arrangements concerning the change and the termination of rights and obligations. He may enter into new agreements only with respect to the termination of any outstanding deals.

(2) In case the liquidator finds out excessive indebtedness of the partnership or company in liquidation, he shall file a petition in bankruptcy without undue delay.

#### **Section 73**

The liquidator shall give notice of liquidation of the partnership or the company to all the known creditors of the fact. He shall also publish the fact that the partnership or the company is in

liquidation together with a notice asking the partnership's or the company's creditors, as well as other persons and bodies concerned, to file proof of their claims, or exercise other rights within a stipulated period, which may not be shorter than three months.

#### **Section 74**

The liquidator shall prepare a balance sheet as of the starting date of the liquidation and shall be obliged to send an overview of the partnership's or the company's property to every shareholder on request.

#### **Section 75**

(1) As of the final day of the liquidation, the liquidator shall prepare and submit to the partners, members, shareholders or to the body authorized to take decisions concerning the winding up of the partnership or the company, financial statements for their approval, together with a final report from the liquidation and a proposal of distribution of the residual liquidation assets (liquidation balance) among the partners, members or shareholders. The liquidator shall be entitled to convene a general meeting for the purpose of presentation of the financial statements, final report and proposal of distribution of the liquidation balance. The provisions of this Act or the articles of association concerning the convocation of the general meeting shall apply *mutatis mutandis*. The partners, members, and shareholders or the respective body of the partnership or the company shall take decisions on the proposals submitted by the liquidator by the majority and at the terms prescribed for the decision concerning the winding-up of the partnership or the company.

(2) If notwithstanding a repeated request of the liquidator the necessary number (prescribed by the law or by the memorandum of association) of partners, members or shareholders fail to give their comments concerning the final report and the proposal of distribution of the liquidation balance, or if the respective body of the partnership or the company fails to take decision concerning the above, the financial statements, the final report and the proposal of distribution of the liquidation balance shall be deemed approved after the expiration of one month following the receipt of the repeated request of the liquidator by the partners, members or shareholders or from the date of meeting of the respective body of the partnership or the company, which was supposed to take a decision concerning the proposals of the liquidator. The liquidator shall deposit the liquidation balance in custody pursuant to a special act. Upon the deposit of the liquidation balance in custody, the liquidation shall be deemed terminated. The liquidator shall attach the financial statements, the final report and the proposal of distribution of the liquidation balance to the request of deletion of the partnership or the company from the Companies Register and file all such documents with the court. The financial statements, the final report and the proposal of distribution of the liquidation balance shall be filed into the Collection of Deeds.

(3) The liquidation balance may be used to settle the claims of partners, members or shareholders only after the claims of all the known creditors shall have been settled.

(4) If a dispute arises with respect to a creditor's claim, the liquidation balance may only be distributed after an adequate security shall have been issued to the creditor.

(5) Within ninety days from the approval of the financial statements, the final report from the liquidation and the proposal of distribution of the liquidation balance, the liquidator shall file, with the Register Court, a request of deletion of the partnership or the company from the Companies Register.

(6) The remuneration of the liquidator shall be determined by the partnership's or the company's



body that has appointed him. In the case the liquidator has been appointed by the court, he shall be entitled to a refund of reasonable expenses and to a fee, as a consideration for his services. If no agreement may be reached between the partnership or the company and the liquidator appointed by the court as to the amount of the fee, upon proposal of the liquidator the expenses to be refunded and the fee to be paid shall be determined by a resolution of the court, which shall be served both upon the liquidator and the partnership or the company. The fee of the liquidator shall be regarded as a claim of the liquidator towards the partnership or the company and shall be paid out of its property.

(7) Details concerning the determination of refund of expenses and fees payable to liquidators shall be defined by a generally binding legal regulation.

#### **Section 75a**

In case it is established that a partnership or a company, which has been deleted from the Companies Register, still have any property, the court shall order, upon proposal of a public authority, the former statutory body, a member thereof or a partner, member, shareholder, creditor, debtor or *ex officio*, a subsequent liquidation of the former partnership or company, and shall appoint a liquidator. The provisions of Section 71 subsection 1 above shall not apply to the appointment of the liquidator. After the decision above shall have become final and non-appealable, the court shall register details concerning the liquidator into the Companies Register. The provisions concerning the liquidation shall apply to subsequent liquidation *mutatis mutandis*. If a court decides to proceed to a subsequent liquidation, any debts receivable from a partnership or company, which could not have been enforced due to a cancellation of the partnership or the company from the Companies Register after its winding up without any successor-in-law, shall be renewed and may be enforced to the extent, in which they are outstanding.

## **PART II GENERAL COMMERCIAL PARTNERSHIPS**

### **1 FUNDAMENTAL PROVISIONS**

#### **Section 76**

A general commercial partnership shall be a partnership, in which two or more parties conduct business under a common business name and bear joint and several liability for the obligations of the partnership with all their properties.

#### **Section 77**

The business name must include the words „verejná obchodná spoločnosť“ which may be substituted by an abbreviation “ver. obch. spol.” or “v.o.s.”. In case the business name includes a surname of at least one of the partners, it shall be sufficient to add the words „a spol.“.

#### **Section 78**

(1) The memorandum of association shall include the following essentials:

- a) the business name and the registered office of the general commercial partnership,
- b) identification of the partners by specifying the business name and the registered office of

the partner (if it is a legal entity) or the name and the residence of the partner (if he is an individual),

c) the scope of business.

(2) All the partners shall undersign and file the request of registration of the general commercial partnership into the Companies Register.

## **2**

### **PARTNERS' RIGHTS AND DUTIES**

#### **Section 79**

The rights and duties of the partners shall be governed by the memorandum of association. The consent of all the partners shall be required for any amendment to the memorandum of association, unless otherwise provided by this Act or by the memorandum of association itself.

#### **Section 80**

(1) The ownership title to the contributions in cash and in kind pledged by the partners shall pass over to the partnership. Each partner shall be obliged to pay up the pledged contribution within the period provided for in the memorandum of association, or, if not stipulated, without undue delay after the partnership's incorporation.

(2) A partner shall be liable to pay default interest at the rate of 20% on the outstanding fraction of the contribution pledged thereby, unless the memorandum of association provides otherwise.

(3) A partner shall not be obliged to increase the contribution pledged thereby above the amount specified in the memorandum of association. No partner shall be obliged to supplement the contribution pledged thereby in the event of any losses suffered by the partnership, unless the memorandum of association provides otherwise.

#### **Section 81**

(1) Each partner shall be entitled to manage the business of the partnership, in line with the policies agreed upon among the partners.

(2) If according to the memorandum of association one or several partners are authorized by the other partners to manage the partnership fully or partially, then the other partners shall be deprived of their authority to manage the partnership to the same extent. The managing partner shall be obliged to follow the instructions approved by a majority of the partners. Every partner shall be entitled to one vote, unless the memorandum of association provides otherwise.

(3) The authorization of the managing partner may be withdrawn if so agreed by the other partners, unless the memorandum of association provides otherwise. If the managing partner is in serious breach of its duties (Section 345 subsection 2 below), the court shall withdraw its authorization upon proposal of any of the other partners, even if the authorization is irrevocable according to the memorandum of association. In this event the provisions of subsection 1 above shall apply up to the time, when the partners agree a new authorization.

(4) The managing partner shall be obliged to disclose information to the other partners concerning any matter related to the partnership upon request. Every partner shall be entitled to inspect any and all of the partnership's documents.

#### **Section 81a**

(1) Any partner shall be entitled to make, on behalf of the partnership, a claim to the payment of

the contribution or to exercise the right to indemnities, which the partnership has towards its partner(s). The above shall not apply if such rights are already exercised by the partnership. No party (other than the partner, who filed the respective action or its agents) shall be allowed to take any action on behalf of the partnership within the framework of the legal proceedings.

(2) The partner, who makes the claims referred to in subsection 1 above on behalf of the partnership, shall bear the legal expenses. If the partnership is adjudicated a refund of legal expenses, the obligor shall refund the same directly to the partner, who made the claims above on behalf of the partnership.

#### **Section 82**

(1) Profits appropriated for their distribution shall be divided equally among the partners. The share of the profits determined with reference to the ordinary financial statements shall be due for payment by the last day of the third month following the financial statements approval.

(2) If the profits are divided among the partners equally, then the partners shall be entitled the payment of interest accrued on the paid up fractions of their contributions at the agreed upon rate or, if no rate has been agreed, at the rate determined pursuant to Section 502 below. The entitlement to receive interest shall survive even if the ordinary financial statements show a loss booked by the partnership, and shall have priority over the entitlement to share the profits under subsection 1 above.

(3) The partners shall bear equally any loss booked in the ordinary financial statements.

(4) The provisions of subsections 1 through 3 above shall apply unless the memorandum of association provides otherwise.

#### **Section 83**

Another partner may join the partnership or a partner may withdraw from the partnership subject to an amendment of the memorandum of association to that effect, and provided that at least two partners remain in the partnership.

#### **Section 84**

##### **BAN ON COMPETITIVE CONDUCT**

Without obtaining an approval from the other partners, a partner shall not be allowed to engage in any business having the same scope as the scope of business of the partnership, either to its own benefit or to the benefit of third parties. The memorandum of association may depart from the ban on competitive conduct above.

### **3**

#### **LEGAL RELATIONS WITH THIRD PARTIES**

#### **Section 85**

Each partner of a general commercial partnership shall be treated as its statutory body, unless the memorandum of association provides that all the partners act jointly. When only some partners are authorized by the memorandum of association to act on behalf of the partnership in any matter, then only these partners shall constitute the partnership's statutory body.

#### **PARTNER'S LIABILITY**

#### **Section 86**

A general commercial partnership shall be liable for its obligations with all its assets and rights. The partners shall bear joint and several liability for the partnership's obligations with all their properties.

#### **Section 87**

(1) Any partner who joined the partnership subsequently, shall be liable also for those partnership's obligations, which arose prior to its association. In case such a partner fulfils the partnership's obligations that arose prior to its association, he may demand compensation from the other partners and a refund of expenses associated therewith.

(2) If the participation of any partner terminates for the term of the partnership, such a partner shall be liable only for those obligations, which arose prior to the termination of its participation on the partnership.

### **4**

#### **WINDING-UP AND LIQUIDATION OF THE PARTNERSHIP**

#### **Section 88**

(1) In addition to the cases referred to in Section 68 above, a partnership shall be wound-up in the following instances:

- a) by a notice of withdrawal, submitted by a partner no later than six months before the end of the calendar year in case of a memorandum of association entered into for an indefinite period and unless otherwise provided therein,
- b) by a ruling of a court pursuant to Section 90 below,
- c) by the death of one of the partners, unless the memorandum of association allows an heir to become a partner and the heir agrees to participate in the partnership and at least two additional partners remain in the partnership,
- d) by the winding-up a legal entity being a partner in the partnership,
- e) by declaring bankruptcy over the property of any of the partners, or by rejecting the petition in bankruptcy due to the lack of property,
- f) by depriving or limiting the capacity of any of the partners to take actions at law,
- g) by delivery of an execution warrant against the share of a partner,
- h) for other reasons provided for in the memorandum of association.

(2) If the partnership is wound up on the grounds set out in subsection 1a), c), d), e) f), and g) above, the remaining partners may decide to amend the memorandum of association and pursue the partnership's business without that partner's participation. Such an amendment to the memorandum of association must be made within three months from the date of winding-up of the partnership, otherwise the entitlement above shall expire and the partnership shall be liquidated.

(3) If the bankruptcy proceedings against the property of a partner, whose participation in the partnership terminated pursuant to subsection 1e) above, are terminated by a final and non-appealable decision of the court, and such a termination is not due to the completed implementation of the distribution scheme or to insufficient property, the participation of the partner on the partnership shall be resumed. In case the partnership pays the settlement balance in the meantime, the partner may claim its refund. The provision above shall apply, *mutatis mutandis*, also to all those cases, in which the execution proceedings are suspended by a final

and non-appealable decision of the court pursuant to special legislation.

(4) In case the partnership, which was wound up pursuant to subsection 1e), f), or g) above, has not yet been deleted from the Companies Register, the partners may agree, subject to the conditions set forth in subsection 3 above, to amend the memorandum of association and to maintain the partnership.

#### **Section 88a**

(1) If the grounds of winding-up referred to in Section 88 subsection 1a), c), d), e), f), and g) above affect one or several partners, and if there is a sole partner, he may decide to take over the assets and liabilities of the partnership wound-up without its liquidation, as its successor-in-law.

(2) The decision above must be taken within one month from the occurrence of the events referred to in subsection 1 above, otherwise such entitlement shall expire and the wound-up partnership shall be liquidated. The decision under subsection 1 above must be made in writing and must contain an authenticated signature of the partner.

(3) If the partner is a limited liability company or a joint stock company, the decision under subsection 1 above requires the approval of the general meeting. The time period under subsection 2 above shall be extended by the time prescribed by this Act or by the memorandum of association or the articles of association for the convocation of the general meeting.

(4) The takeover of the assets and liabilities of the partnership by the partner shall be effective upon registration of such a transaction into the Companies Register. Upon the registration above, the partner shall acquire also the labor rights and duties of the wound-up partnership.

(5) The following entry shall be made into the Companies Register:

- a) with respect to the wound-up partnership the fact that the assets and liabilities of the partnership have been taken over by a partner, together with his business name, residence and birth certificate number or its business name, registered office and identification number,
- b) with respect to the partner, who took over the assets and liabilities of the partnership, the fact that the assets and liabilities of the partnership have been taken over by such a partner, together with the business name, registered office and identification number of the partnership. The above shall apply only if the partner is registered in the Companies Register.

(6) The request of registration into the Companies Register shall be filed by the partner. The decision to take over the assets and liabilities referred to in subsection 1 above must be attached to the request.

#### **Section 89**

In cases specified in Section 88 subsection 2 and in Section 88a above, the ex-partner or his heir, or the ex-partner's successor-in-law shall be entitled to a settlement share. Such amount shall be calculated using the same method as the one used to determine the share in the liquidation balance (Section 92 below).

#### **Section 90**

The court may order the winding-up of a partnership upon request of a non-defaulting partner, if any of the partners is in serious breach of the memorandum of association.

#### **Section 91**

### **DEATH OF A PARTNER**

(1) Unless the partnership is wound-up as a result of a partner's death, his heir may exercise the rights to become partner within one month from the termination of the inheritance proceedings. By doing so, the heir shall take over the rights and obligations of the deceased partner as of the day of the latter's decease. The heir's claim must be executed in writing and the heir's signature must be officially authenticated.

(2) An heir, who fails to claim his right to participate in the partnership, shall be entitled to the payment of a settlement share pursuant to Section 89 above.

(3) The provisions of subsections 1 and 2 above shall apply, *mutatis mutandis*, if the deceased partner's share is inherited by several heirs, while the rights above shall apply to each heir and his or her participation. The deceased partner's share in the partnership's property shall be divided among his heirs in the same ratio as applicable to other inheritance. Those heirs, who fail to claim their right to participate in the partnership's business, shall be compensated by a prorated settlement share of the deceased partner, which they have inherited. Those heirs, who wish to pursue the partnership, shall become partners. Their shares shall be determined as a ratio pro rata to the settlement share of the deceased partner, which they have inherited.

#### **Section 92**

### **SETTLEMENT BETWEEN PARTNERS**

(1) In case of a partnership's winding-up and liquidation, the partners shall be entitled to share the liquidation balance. The liquidation balance shall first be distributed among the partners pro rata to their paid up contributions. Thereafter, the residual liquidation balance shall be distributed equally among the partners.

(2) If the liquidation balance is insufficient to redeem all the partners' paid up contributions, the liquidation balance shall be divided among the partners pro rata to their paid up contributions.

(3) The memorandum of association may regulate the distribution of the liquidation balance otherwise.

### **PART III**

### **LIMITED PARTNERSHIPS**

#### **1**

### **FUNDAMENTAL PROVISIONS**

#### **Section 93**

(1) A limited partnership shall be a partnership, in which one or more partners bear limited liability for the partnership's obligations up to their outstanding contribution(s) registered in the Companies Register (limited partners) and one or more partners bear unlimited liability with their entire properties (general partners).

(2) Unless otherwise provided below, the provisions of this Act applicable to the general commercial partnership shall be apply, *mutatis mutandis*, to a limited partnership, while the provisions applicable to the limited liability companys shall apply, *mutatis mutandis*, to the legal status of limited partners.

(3) The limited partner shall make a contribution to the partnership for the amount specified in the memorandum of association, which however shall not be lower than 10 000 SKK. The contribution shall be paid up by the date specified in the memorandum of association or, if not

specified, without undue delay following the incorporation of the partnership or, as appropriate, following his joining the partnership.

#### **Section 94**

The memorandum of association shall include the following essentials:

- a) the business name and the registered office of the partnership,
- b) identification of the partners by specifying the business name and the registered office (if the partner is a legal entity) or the name and the residence (if the partner is an individual),
- c) the scope of business,
- d) information as to which partners are general partners and which are limited partners. As regards general partners, also their birth certificate numbers (if individuals) or their identity numbers (if legal entities), if any. As regards non-resident individuals, the memorandum of association shall specify their dates of birth, if no birth certificate number has been assigned,
- e) the amount of each limited partner's pledged contribution.

#### **Section 95**

The business name of a limited partnership must include the words „komanditná spoločnosť“, or abbreviations „kom. spol.“ or „k.s.“. If the business name of a limited partnership includes the name of a limited partner, this partner shall bear liability for the partnership's obligations to the same extent as a general partner.

#### **Section 96**

The request of registration of the limited partnership into the Companies Register shall be undersigned and filed by all the partners.

### **2**

#### **PARTNERS' RIGHTS AND OBLIGATIONS**

##### **Section 97**

- (1) Only the general partners shall be entitled to manage the partnership.
- (2) Other matters shall be decided jointly by general and limited partners by a majority of votes, unless the memorandum of association provides otherwise.
- (3) When voting, each partner shall be entitled to one vote, unless the memorandum of association provides otherwise.
- (4) The approval by all the partners shall be required to amend the memorandum of association. The memorandum of association may set forth that the approval of the other partners shall not be required in case of transfer of a limited partner's share to another person. The provisions of Section 115 below shall apply *per analogiam*.
- (5) The provisions of Section 81a above shall apply to the entitlement of the partners to make, on behalf of the partnership, the claim to the payment of the contribution or to exercise the right to indemnities, which the partnership has towards its partner(s).

##### **Section 98**

A limited partner shall be entitled to inspect the accounting records and the accounting documents of the partnership and shall have the right to receive a copy of the ordinary financial

statements.

#### **Section 99**

The ban on competitive conduct shall not apply to limited partners, unless the memorandum of association provides otherwise.

#### **Section 100**

- (1) The profits shall be divided in two fractions – the first fraction payable to general partners and the second fraction payable to limited partners, while the ratio shall be set forth in the memorandum of association, otherwise the profits shall be divided into two halves.
- (2) Unless the memorandum of association provides otherwise, the fraction of the profits payable to general partners shall be distributed among them in equal parts, whereas the distribution of profits among the limited partners shall be made pro rata to their paid-up contributions.

### **3**

#### **LEGAL RELATIONS WITH THIRD PARTIES**

##### **Section 101**

- (1) General partners shall constitute the statutory body of the partnership. Unless the memorandum of association provides otherwise, every general partner shall be entitled to act individually on behalf of the partnership.
- (2) The limited partner, who undersigns an agreement without the partnership's authorization, shall bear liability for the obligations arising out of such agreement to the same extent as a general partner.

### **4**

#### **WINDING-UP AND LIQUIDATION OF A LIMITED PARTNERSHIP**

##### **Section 102**

- (1) Neither the decease of a limited partner, nor its deprivation or limitation of the capacity to take actions at law, nor the issue of a bankruptcy order against its property, nor the dismissal of the petition in bankruptcy due to insufficient property, shall result in the winding-up of the limited partnership. The winding-up of a legal entity, which is a limited partner of a limited partnership, shall not result in the winding-up of the limited partnership.
- (2) In the event of issue of a bankruptcy order against a limited partner's property, or in the event that a petition in bankruptcy is dismissed due to insufficient property thereof, the participation of the limited partner in the partnership shall be terminated and his entitlement to a settlement share shall become part of the bankruptcy estate.

##### **Section 103**

If the participation of all limited partners is terminated, the general partners may agree to reorganize their limited partnership into a general commercial partnership without liquidation. The provisions of Section 69 above shall hereby not be affected.

##### **Section 104**

- (1) In the event of winding up of the limited partnership and its liquidation, all partners shall be

entitled to share the liquidation balance. Every partner shall be entitled to the repayment of its paid-up contribution. If the liquidation balance is not sufficient to repay the paid-up contributions of all the partners, the limited partners shall have preemption right to the repayment of their contributions. The remaining portion of the liquidation balance, which is left after the repayment of the contributions above, shall be distributed among the partners in the same ratio, in which profits are distributed.

(2) If the liquidation balance is not sufficient for the distribution under subsection 1 above, it shall be distributed among the partners in the same ratio, in which profits are distributed.

(3) The memorandum of association may set forth another procedure for the distribution of the liquidation balance.

## **PART IV LIMITED LIABILITY COMPANIES**

### **1 FUNDAMENTAL PROVISIONS**

#### **Section 105**

(1) A limited liability company shall be a company, the registered capital of which shall be made up of predetermined contributions of its members.

(2) A limited liability company may be established by one party only.

(3) The maximum number of members of a limited liability company shall be 50.

#### **Section 105a**

(1) A company with a sole member can not be the sole founder or the sole member of another company. An individual may be the sole member of not more than three companies.

(2) If a bankruptcy order is made against a company having a sole member, such a member may establish another company only after one year shall have elapsed from the date of full settlement of obligations which accrue from the assets, against which a bankruptcy order was made, in accordance with a final and non-appealable decision of the court concerning the distribution of the bankruptcy estate.

(3) If the insolvency or the excessive indebtedness, which are the underlying reason for the filing the petition in bankruptcy, are caused by a willful misconduct corroborated by a final and non-appealable ruling of a court, the party who caused such a willful misconduct shall be allowed to establish another company only after ten years shall have elapsed from the settlement of the obligations of the wound-up company.

#### **Section 106**

The company shall be liable for the breach of its obligations with its entire property. Each member's liability for the company's obligations shall be limited to the outstanding fraction of its pledged contribution registered in the Companies Register. Any payment made on behalf of the company by virtue of the liability above shall be set-off against the outstanding contribution, otherwise the member may claim a refund from the company. If it is impossible for the member to obtain a refund from the company, it may claim a refund from any of the other members, using the ration between their contributions and the registered capital of the company.

#### **Section 107**

The company's business name must include the words „spoločnosť s ručením obmedzeným“, or the abbreviation „spol.s.r.o.“, or „s.r.o.“.

#### **Section 108**

(1) The minimum amount of the company's registered capital shall be 200,000 Slovak Crowns.

(2) No member shall be allowed to take a unilateral action and set-off any of its claims towards the company against the claim of the company to receive the payment for the contribution pledged by the member. The provisions of Section 106 above shall hereby not be affected.

#### **Section 109**

(1) The minimum amount of a member's contribution into the company shall be 30,000 Slovak Crowns.

(2) Each member may take part in the company's establishment with one contribution only. The individual contributions of the member may differ, provided that such amounts are a multiple of 1 000. The aggregate amount of all the individual contributions must be equal to the registered capital of the company.

(3) If a member undertakes to make a contribution in kind to the company, the memorandum of association must specify the nature of such a contribution in kind and its value in money terms (which shall be set-off against the pledged contribution of the member).

#### **Section 110**

(1) The memorandum of association must contain the following essentials:

- a) the business name and the registered office of the company,
- b) identification of the company's members, by specifying the business name and the registered office (if the member is a legal entity), or the name and the residence (if the member is an individual),
- c) the scope of its business (activities),
- d) the amount of the registered capital, the amount of each member's contribution to the company, the fraction thereof paid up upon establishment of the company, the terms of payment of the pledged contributions, and a description of the contributed property in case of any contributions in kind, together with its value in money terms, which shall be set-off against the pledged contribution of the member,
- e) the names, residences and birth certificate numbers of the company's first executive directors and the manner in which they will represent the company. As regards non-resident individuals, their dates of birth shall be specified if no birth certificate numbers have been assigned thereto,
- f) the names, residences and birth certificate numbers of the members of the first supervisory board, if established. As regards non-resident individuals, their dates of birth shall be specified if no birth certificate numbers have been assigned thereto.
- g) identity of the contributions custodian referred to in Section 60 subsection 1 above,
- h) the reserve fund, where a reserve fund is established by the company upon its incorporation, the limit, up to which the company shall be obliged to replenish the reserve fund, together with the terms thereof,
- i) benefits granted to persons involved on the establishment of the company and on the obtainment of its permits and authorizations,

- j) an estimate of the expenses of the company associated with the establishment and incorporation of the company,
  - k) further details, if any, required by the law.
- (2) The memorandum of association may also provide that articles of association shall be issued to regulate the company's internal organization, and address in more detail some matters included in the memorandum of association.

#### **Section 111**

- (1) Any contribution in cash must be paid up by no less than 30% prior to the filing of the request of registration of the company into the Companies Register. The aggregate value of the paid-up contributions in cash, together with the value of contributions in kind which have been handed over to the company, shall be no less than 100,000 Slovak Crowns.
- (2) In the event that the company is established by a sole founder, the company may be registered in the Companies Register only after its registered capital shall have been fully paid up.

#### **Section 112**

All the executive directors shall undersign and file the request of registration of the company into the Companies Register.

### **2**

## **MEMBERS' RIGHTS AND DUTIES**

#### **Section 113**

- (1) A member shall be obliged to pay up his pledged contribution at the terms and by the date prescribed by the law or, as appropriate, set forth in the memorandum of association. However such a payment must be made not later than five years following the company's incorporation or within five years from the date, on which the member joined the company, or from the date of subscription of a new contribution. No member may be exempt from the duty above. The executive directors shall notify the Register Court of the payment in full of each member's contribution without any undue delay.
- (2) A member, who has not paid up its pledged contribution in cash by the date set forth in subsection 1 above, shall pay default interest at the rate of 20% of the outstanding amount, unless the memorandum of association provides otherwise.
- (3) If a member is in default in the payment of its contribution in cash, the company may send a reminder thereto and warn the member that unless it performs its duty above within an additional period of no less than three months, it may be expelled from the company.
- (4) A member in default in the payment duty after the expiration of the additional period above may be expelled from the company by the general meeting.
- (5) The ownership interest (Section 114 below) of the expelled member shall pass over to the company, which shall be free to transfer the same to another member or to a third party. A decision concerning such a transfer shall be taken by the general meeting.
- (6) Unless the ownership interest is transferred as provided in subsection 5 above, the general meeting shall decide, within six months from the date of expulsion, to reduce the registered capital by the contribution of the expelled member, otherwise the court may order the winding-up and liquidation of the company even *ex officio*.

#### **Section 114**

- (1) The ownership interest shall represent the rights and duties of a member and thereto-corresponding participation in the company. It shall be determined as a ratio between the member's pledged contribution to the company and the company's registered capital, unless the memorandum of association provides otherwise.
- (2) Each member may only have one ownership interest. If any member makes additional contribution to the company, its ownership interest shall be increased pro rata to the amount of such additional contribution.
- (3) One ownership interest may be owned by more than one person. Such persons shall exercise their rights arising out of the ownership interest through a joint representative and shall bear joint and several liability for the payment of their pledged contribution.

#### **Section 115**

- (1) Unless the memorandum of association provides otherwise, a member shall be free to transfer its ownership interest to another member under an agreement, subject to the approval of the transfer by the general meeting.
- (2) If admitted by the memorandum of association, a member may transfer its ownership interest to a third party. The memorandum of association may provide that an approval of the general meeting shall be required for any transfer of the ownership interest to a third party.
- (3) The agreement concerning the transfer of the ownership interest must be made in writing and the signatures thereon must be officially authenticated. If the transferee is not a member in the company, it must represent in the ownership interest transfer agreement its will to adhere to the memorandum of association and to the articles of association, if any. The transferor shall be liable for the obligation of the transferee to pay up its pledged contribution.
- (4) The transfer of the ownership interest pursuant to subsections 1 and 2 above shall be effective vis-a-vis the company upon receipt of the ownership interest transfer agreement, unless the effective date of such an agreement was set to a later date. Notwithstanding the above, it shall not be effective prior to the approval of the transfer of the ownership interest by the general meeting in cases, in which the law or the memorandum of association require an approval of the transfer of the ownership interest by the general meeting.

#### **Section 116**

- (1) In case of winding up of a legal entity holding an ownership interest in the company, its ownership interest shall be transferred to its successor-in-law. However, the memorandum of association may exclude such a transfer to the successor-in-law of a wound-up legal entity.
- (2) The ownership interest shall be transferred to the heir of the deceased member. The memorandum of association may exclude the above, unless there is a sole member. If the heir is not a sole member, he may request the court to terminate his participation in the company, if he cannot be reasonably required to acquire the status of member of the company. The provisions of Section 113 subsections 5 and 6 above shall apply *mutatis mutandis*.
- (3) Unless the ownership interest is transferred to a member's heir or a member's successor-in-law, the provisions of Section 113 subsections 5 and 6 above shall apply *per analogiam*.

#### **Section 117**

- (1) The split of an ownership interest shall only be admissible if the ownership interest is transferred to a member's heir or a member's successor-in-law. The approval of the general

meeting shall always be required for any split of an ownership interest.

(2) The memorandum of association may exclude the split of the ownership interest.

(3) Upon any split of the ownership interest it shall be necessary to comply with the minimum limit of the contribution (referred to in Section 109 subsection 1 above).

#### **Section 117a**

(1) The ownership interest may be pledged as security. Unless this Act provides otherwise, the provisions of a special act shall apply to the establishment of a pledge over the ownership interest.

(2) Any agreement, by which a security over ownership interest is established, must be made in writing, while the signatures on the pledge agreement must be officially authenticated.

(3) No pledge may be established over the ownership interest if according to the memorandum of association the ownership interest is not transferable. If the ownership interest is transferable only with the approval of the general meeting, the approval of the general meeting shall be required also for the establishment of a pledge over the ownership interest, otherwise the pledge shall not be established. No approval of the general meeting shall be required for the transfer of the pledged ownership interest in case of enforcement of the pledge. If the memorandum of association requires other conditions to be satisfied for the transfer of the ownership interest, such conditions must be satisfied also for the establishment of the pledge.

(4) The pledge over the ownership interest shall be established upon its registration into the Companies Register. Either the pledgor or the pledgee may file a request of registration or deletion of a pledge established by a pledge agreement.

(5) For the entire term of existence of the pledge over the ownership interest, the rights ensuing therefrom shall be exercised by the member.

#### **Section 118**

(1) The company shall keep a register of members containing the following details: name, residence and birth certificate number of each member (if he is an individual) and business name (designations), registered office and identification number of each member (if it is a legal entity), together with their contributions and the extent, in which they have been paid up. As regards non-resident legal entities, the identification number shall be recorded only if it has been assigned. As regards non-resident individuals, their dates of birth shall be recorded if no birth certificate numbers have been assigned. Any member may view the register of members. Upon request of any member, the company shall issue an abstract from the register of members.

(2) The replacement of a company member must be entered into the register of members and in the Companies Register. The former member's liability for the company's obligations shall pass over to the transferee upon the entry above into the Companies Register.

#### **Section 119**

Whenever all the ownership interest become owned by a sole member only, such member shall be obliged either to pay up fully all the contributions in cash or to transfer a fraction of his ownership interest to another party within three months thereof. In case of any breach of the obligation above by the member, the court shall order the winding up and liquidation of the company even *ex officio*.

#### **Section 120**

(1) Unless this Act provides otherwise, a company shall not be allowed to acquire its own ownership interests.

(2) If a company acquires its own ownership interests in accordance with this Act, it shall not be allowed to exercise the rights of member and shall proceed as provided in Section 113 subsections 5 and 6 above, *mutatis mutandis*. The provisions of Section 161d subsection 2 below shall apply *mutatis mutandis*.

(3) A controlled party shall not be allowed to acquire the ownership interest on its controlling party. The above shall not apply if the ownership interest is acquired through succession or if it becomes a successor-in-law and is subrogated in all the rights and duties of the former ownership interest holder.

(4) If a controlled party acquires the ownership interest on its controlling party in accordance with this Act, it shall not be allowed to exercise the rights of member and shall be obliged to dispose of such ownership interest within six months from the date of its acquisition through its transfer to another member or a to a third party. In case of default, the court may order the winding-up and liquidation of the party even *ex officio*, unless the controlled party files with the court a request of termination of its participation on the company pursuant to Section 148 below. The provisions of Section 68 subsections 6 and 7 above shall apply *mutatis mutandis*.

#### **Section 121**

(1) The memorandum of association may provide the entitlement of the general meeting make the members obliged to make a payment in cash in order to cover the losses suffered by the company, up to 50% of the company's registered capital and pro rata to each member's pledged contribution. The provisions of Section 113 subsections 2 through 4 above shall apply to any breach of this requirement, *per analogiam*.

(2) The fulfillment of the duty under subsection 1 above shall not affect the amount of a member's contribution in the company.

#### **Section 122**

(1) Members shall exercise their rights with respect to the management of the company and the supervision of its operations by attending general meetings, to the extent and in the manner described in the memorandum of association or in the articles of association, as appropriate.

(2) Members shall be entitled, in particular, to demand from the executive directors the disclosure of information related to matters concerning the company and to inspect documents of the company.

(3) Any member shall be entitled to make, on behalf of the company, claims to indemnities and other claims, which the company has towards the executive director, claims to the payment of the pledged contribution against the member, who is in default, or claims to a refund of a payment made to any member in contrast with the law. The above shall not apply if such claims have already been made by the company. No party (other than the member, who filed the respective action or his agents) shall be allowed to take any action on behalf of the company within the framework of the legal proceedings.

(4) A member, which makes claims referred to in subsection 3 above on behalf of the company, shall bear the legal expenses. If the company is adjudicated a refund of legal expenses, the obligor shall refund the same directly to the member, who made the claims above on behalf of the company.

### Section 123

- (1) Each member shall be entitled to share the profits pro rata to his paid-up contribution, unless the articles of association provide otherwise.
- (2) The company shall only be allowed to pay dividends subject to the satisfaction of conditions set forth in Section 179 subsections 3 and 4 below. In particular, the company shall not pay any interest on contributions made to the company and advances for the account of dividends.
- (3) The members may not ask for a redemption of their contributions for the entire term of existence of the company. Payments made to members due to a reduction of the registered capital shall not be regarded as redemption of the members' contributions.
- (4) The members shall be obliged to refund to the company any profits paid to them in contrast with the provisions above. The executive directors who have approved such payments shall bear joint and several liability for the refund above.

### Section 124

- (1) The company shall establish a reserve fund (Section 67 above) at the time and for the amount specified in the memorandum of association. Unless the reserve fund is established upon incorporation of the company, the company shall establish the same using net profit reported in the ordinary financial statements for the year, in which the first profit is booked. The reserve fund shall achieve not less than 5% of the net profit, however not more than 10% of the registered capital.
- (2) The use of the reserve fund shall be decided by the executive directors, in compliance with the provisions of Section 67 subsection 1 above.

## 3 COMPANY BODIES

### GENERAL MEETING

### Section 125

- (1) The general meeting shall be the supreme body of the company. It shall be authorized:
  - a) to approve actions taken by persons acting on behalf of the company prior to its incorporation,
  - b) to approve the ordinary individual financial statements and extraordinary individual financial statements, and decisions concerning the distribution of profits and coverage of losses,
  - c) to approve and to amend the company's articles of association,
  - d) to decide on the amendments of the memorandum of association (Section 141 below), if the law or the memorandum of association delegate such powers to the general meeting,
  - e) to decide on the increase and reduction of the registered capital and on any contributions in kind,
  - f) to appoint, remove and remunerate company executive directors,
  - g) to appoint, remove and remunerate members of the supervisory board,
  - h) to expel a member as provided in Sections 113 and 121 above, and to take decisions concerning the filing of requests referred to in Section 149 below,
  - i) to decide on the winding-up of the company or change of its corporate form, if the memorandum of association so admits,

- j) decisions concerning approval of any agreement concerning sale of the enterprise, in full or in part,
  - k) to decide other matters, which this Act, the memorandum of association, or the articles of association entrust to the authority of the general meeting.
- (2) Unless otherwise provided in the memorandum of association, or in the articles of association, as appropriate, the general meeting shall also decide the appointment and removal of a procurator.
  - (3) The general meeting may reserve the right to decide other matters, which would otherwise fall under the authority of other company bodies.

### Section 126

A member may attend general meetings either personally or through a proxy, on the basis of a written power of attorney. No executive director of the company and member of the company's supervisory board shall be allowed to act as proxy of any of the members.

### Section 127

- (1) The general meeting shall constitute quorum if attended by members entitled to not less than one half of all the votes, unless the memorandum of association provides otherwise.
- (2) Each member shall have one vote per every thousand Crowns of his pledged contribution, unless the memorandum of association determines otherwise.
- (3) The general meeting shall take decisions by a simple majority of votes of the members attending the meeting, unless the law or the memorandum of association require a higher number of votes.
- (4) Approval by at least a two-thirds majority of votes of all the members shall be required for decisions concerning matters referred to in Section 125 subsection 1a), c), d), e) and i) above. The memorandum of association may require a higher majority for passing the decisions above.
- (5) A member shall not be allowed to exercise its voting rights if the general meeting is taking decisions concerning:
  - a) a contribution in kind pledged by the member,
  - b) the expulsion of the member or filing of a request of its expulsion from the company.
- (6) At determining, whether the general meeting constitutes quorum or not, and at the votes cast, any votes, which the member is not able to exercise, shall be disregarded. The above shall apply, *mutatis mutandis*, also to any decision taken by members outside the general meeting.

### Section 127a

- (1) The general meeting shall elect its chairman and minutes clerk. Prior to the election of the chairman, the general meeting shall be chaired by the executive director or by another person authorized thereby. If no such a person attends the general meeting, any of the members shall be free to chair the general meeting until the time, when the chairman shall have been elected.
- (2) The minutes taken at general meetings shall contain the following essentials:
  - a) the business name and registered office of the company,
  - b) the venue, date and hour of the general meeting,
  - c) the name of the chairman and the minutes clerk,
  - d) a description of the proceedings concerning the individual items on the agenda,
  - e) the decisions of the general meeting and the votes cast.
- (3) The minutes taken at any general meeting shall be undersigned by the chairman of the



general meeting and the minutes clerk. Attached to the minutes there shall be proposals and statements made at the general meeting to be discussed therein, and a list of the attending members.

#### **Section 128**

- (1) Unless the law, the memorandum of association, or the articles of association determine a shorter period, general meetings shall be convened by executive directors at least once a year.
- (2) The provisions of Section 193 below shall apply *mutatis mutandis*.

#### **Section 129**

- (1) The members shall be informed of the date and the agenda of the general meeting in advance, by the date specified in the memorandum of association, or, if not specified, at least 15 days prior to the date of the general meeting. The general meeting shall be convened by a written invitation, unless the memorandum of association provides otherwise.
- (2) Any member, whose contribution achieves 10% of the registered capital, may ask for a convocation of the general meeting. Unless the executive directors convene a general meeting so that it is held within one month from the receipt of such a requirement, the members shall be authorized to convene the general meeting themselves.

#### **Section 130**

Members may also take decisions outside general meetings. In this event, a draft resolution shall be submitted to the members with a request to give, by a specific date, their comments concerning the draft resolution. Resolutions to be taken shall be proposed to the members for their comments by the executive director or the member(s), whose contributions achieve 10% of the registered capital, or by the supervisory board, if any. The proposals shall specify the date, by which the members should send their written comments to the address of the registered office of the company. The memorandum of association may specify that the right above shall inure also to the benefit of a member holding ownership interest of less than 10% of the registered capital.

#### **Section 131**

- (1) Any member, executive director, liquidator, receiver in bankruptcy, administrator or member of the supervisory board of the company may file a request with the court asking to declare void a resolution of the general meeting, which is in contrast with the law, the memorandum of association or the articles of association. The right above shall inure also to the benefit of former members and executive directors, if they are affected by such a resolution of the general meeting. However such right shall be time-barred if not exercised by the authorized party within three months from the date of approval of the resolution in question or, if the general meeting fails to be convened in due manner, from the date on which the party could have learned of such a resolution.
- (2) The court may declare void a resolution of the general meeting upon request of a member only if the breach of the law, the memorandum of association or the articles of association is able to impair the rights of the requesting member.
- (3) The company shall be represented in the legal proceedings by its executive directors, however if they are party to such proceedings themselves, the company shall be represented by an appointed member(s) of the supervisory board. If the action was brought in the court by both

the company executive directors and the members of its supervisory board, or if there is no supervisory board, a company representative shall be appointed by the general meeting. Unless such a representative is appointed within three months of the service of the action above, the court shall appoint a guardian to represent the company.

- (4) The resolution of the general meeting which was subsequently declared null and void shall not affect the rights of third parties acquired in good faith. In case of doubt, good faith of third parties shall be presumed.
- (5) The final and non-appealable decision of the court rendered pursuant to subsection 1 above shall be binding vis-a-vis any party.

#### **Section 132**

- (1) If the company has a sole member, the powers of the general meeting shall be vested in such a member. The decision of the sole member, in whose the powers of the general meeting are vested, must be made in writing and must be undersigned by the member, unless this Act provides otherwise.
- (2) Any agreement entered into between the company and its sole member acting on its behalf and on behalf of the company at the same time must be made in writing.

### **EXECUTIVE DIRECTORS**

#### **Section 133**

- (1) One or several executive directors shall constitute the statutory body of the company. If there are more executive directors, each of them shall be entitled to act individually on behalf of the company, unless the memorandum of association provides otherwise.
- (2) Only individuals may discharge the office of executive director.
- (3) The executive directors' authority may only be restricted by the memorandum of association or the general meeting. Such a restriction shall, however, be ineffective vis-a-vis third parties.
- (4) Executive directors shall be appointed from among the company members or other individuals by the general meeting.

#### **Section 134**

The consent of a simple majority of the executive directors shall be required for any decision concerning the company's management, which falls within the authority of the executive directors, unless the memorandum of association requires a higher majority.

#### **Section 135**

- (1) The executive directors shall be obliged to provide for due keeping of the books and accounting records prescribed by the law, the register of the members and shall inform the members on the company matters.
- (2) The executive directors shall submit to the general meeting, for their approval, ordinary individual financial statements, extraordinary individual financial statements, and proposals of distribution of profits or coverage of losses, as provided in the memorandum of association and articles of association. If a special act makes the company obliged to issue an annual report, the executive directors shall submit to the general meeting for its review also an annual report attached to the ordinary or extraordinary individual financial statements.

### **Section 135a**

(1) The executive directors shall discharge their offices with due care and in line with the interests of the company and all of its members. In particular, the executive directors shall collect and at their decision making take into account any available information concerning such a decision, shall not disclose any confidential information and facts, the disclosure of which to third parties could cause damage to the company or prejudice its interests or the interests of its members, and shall not, at discharging their duties, prefer their own interests or interests of certain members only or interests of third parties to the interests of the company.

(2) The executive directors, who are in breach of their duties, shall be liable jointly and severally to indemnify the company against the damage, which was caused thereto. In particular they shall indemnify the company against any damage due to the following:

- a) payments made to members in contrast with this Act,
  - b) acquisition of property by the executive directors in contrast with Section 59a above.
- (3) The executive director shall not be liable for the damage after he shall have submitted evidence showing to have discharged his duties with due care and to have acted in good faith for the benefit of the company. The executive directors shall not be liable for any damage caused to the company at the implementation of a resolution of the general meeting. The above shall not apply if the resolution of the general meeting is contrary to the law, the memorandum of association, or the articles of association. If there is a supervisory board, the executive directors shall not be discharged of their liability if their conduct has been approved by the supervisory board.

(4) Any agreements between the company and the executive director, which exclude or restrict the scope of liability of the executive director, shall be forbidden. The liability of the executive director can not be restricted or excluded neither by the memorandum of association nor by the articles of association. The company may waive its claims to indemnity against the executive director or make a settlement therewith, but not earlier than three years after the occurrence thereof, and only if the waiver is approved by the general meeting and if no objection against such a resolution is raised at the general meeting and included in the minutes by any member(s), whose contribution achieves 10% of the registered capital.

(5) The claims of the company against the executive director to indemnities may be made by a creditor of the company in its own name and for its own account in case it is not able to satisfy its debt out of the property of the company. The provisions of subsections 1 through 3 above shall apply *mutatis mutandis*. The claims of the creditors of the company towards the executive director shall not be extinguished even if the company waives its claims to indemnities or enters into a settlement agreement with the executive directors. If a bankruptcy order is made against the property of the company, the claims of the creditors shall be enforced towards the executive directors by the trustee in bankruptcy.

### **Section 136 BAN ON COMPETITIVE CONDUCT**

(1) Unless the memorandum of association or the articles of association imply other restrictions, the executive director shall not be allowed:

- a) to conclude in his own name and for his own account business deals which are associated with the business of the company,
- b) to facilitate the deals of the company for other parties,
- c) to participate in the business of any partnership as a partner with unlimited liability,

- d) to discharge the office statutory body or be a member of a statutory or similar body of another legal entity having a similar scope of business, unless the company, of whose statutory body he is a member, has any interest in the other company's business.
- (2) The breach of subsection 1 above shall bear the consequences provided in Section 65 above.
- (3) The memorandum of association or the articles of association may determine the extent, in which the ban on competitive conduct applies also to the members of the company.

### **SUPERVISORY BOARD**

#### **Section 137**

The supervisory board shall only be established if the memorandum of association provides so.

#### **Section 138**

- (1) The supervisory board:
- a) shall supervise any actions taken by the executive directors,
  - b) shall inspect business and accounting books and other documents and check the data therein contained,
  - c) shall review the ordinary, extraordinary, consolidated, and, as appropriate, preliminary financial statements, and the proposal of distribution of profits or coverage of losses, and submit its findings to the general meeting,
  - d) shall submit reports to the general meeting by the dates set forth in the memorandum of association, otherwise once a year.
- (2) The members of the supervisory board may request from the executive directors information and explanations concerning any dealings of the company and view any business and accounting books and other documents of the company.

#### **Section 139**

- (1) Members of the supervisory board shall be appointed by the general meeting.
- (2) The executive director may not discharge the office of member of the supervisory board.
- (3) The supervisory board must have no less than three members.
- (4) The ban on competitive conduct (Section 136 above) shall also apply to the members of the supervisory board, while the provisions of Section 135a shall apply *mutatis mutandis*.

#### **Section 140**

- (1) Members of the supervisory board shall attend general meetings. They shall be entitled to address the general meeting whenever they request.
- (2) The supervisory board shall convene a general meeting at all times, if the interests of the company so require. The provisions of Section 129 subsection 1 above shall apply, *mutatis mutandis*, to the manner of convocation of general meetings by the supervisory board.

## **4**

### **AMENDMENTS TO THE MEMORANDUM OF ASSOCIATION**

#### **Section 141**

- (1) The consent of all the members shall be required for any amendment to the memorandum of association, except in cases when the law or the memorandum of association authorizes the

general meeting to amend the same.

(2) Any amendment to the memorandum of association, which extends the scope of duties imposed upon the members, or which restricts or impairs the rights granted to the members by the memorandum of association, must be approved by all the members, which are affected thereby, in order to be valid.

(3) If a decision is passed, which results in changes to the clauses of the memorandum of association, such a decision shall be regarded as a decision to amend the memorandum of association, provided that the decision has been passed in compliance with the requirements of the law and the memorandum of association for the passing of decisions amending the memorandum of association. The executive directors shall prepare full version of the memorandum of association without undue delay after the approval of any amendment thereto and shall be liable for the completeness and accuracy of such a version.

## **INCREASE AND REDUCTION OF THE REGISTERED CAPITAL**

### **Section 142**

It shall be admissible to increase the registered capital by new contributions in cash only after the existing contributions in cash shall have been fully paid up. The registered capital may however be increased by contributions in kind prior to the above.

### **Section 143**

(1) Unless the memorandum of association or the decision of the general meeting to increase the registered capital provide otherwise, the current members shall have preemption rights in the subscription of new contributions pro rata to their then existing ownership interests. The preemption rights must be exercised by the date specified in the memorandum of association, or, if not specified, within one month from the date of the decision of the general meeting to increase the registered capital.

(2) If the registered capital is to be increased by contributions in kind, the general meeting shall approve the nature of the contribution in kind and its value in money terms (which shall be set-off against the pledged contribution of the member).

(3) The new contributions shall be subscribed by means of a written statement, in which the subscriber (other than the current members) must agree to adhere to the memorandum of association, while his signature must be officially authenticated.

(4) The provisions concerning the payment of contributions at the time of establishment of the company shall apply to the increase of the registered capital by new contributions, *mutatis mutandis*.

### **Section 144**

The general meeting may decide to increase the company's registered capital out of its retained earnings or out of any funds of the company established out of retained earnings, the use of which is not restricted by the law, or out of other equity items of the company disclosed in the individual financial statements, subject to the satisfaction of the conditions under Section 179 subsections 3 and 4 below. The provisions of Section 208 subsection 2 below shall apply *mutatis mutandis*.

### **Section 145**

The executive directors shall be obliged to file a request of registration of the increase of the registered capital into the Companies Register without undue delay.

### **Section 146**

Any resolution concerning the reduction of the registered capital must be passed by the general meeting. The amount of the registered capital of the company and the amount of each member's contribution may never be reduced below the limits set forth in Section 108 and Section 109 subsection 1 above.

### **Section 147**

(1) The executive directors shall be obliged to publish the reduction of the registered capital (together with its extent) for the first time within 15 days of the date of such a resolution and for the second time within 30 days from the date of the first notice. The notice shall be addressed to the company's creditors, asking them to file proofs of their claims within 90 days from the date of the last notice.

(2) The company shall be obliged either to provide adequate securities to those creditors, who filed proofs of their claims in time, or to settle the same.

(3) The court shall register the reduced registered capital into the Companies Register only if evidence is provided that a notice of reduction of the registered capital has been served as provided in subsection 1 above and that creditors have been given securities in accordance with the provisions of subsection 2 above, unless their claims have been settled in the meantime.

## **TERMINATION OF MEMBERSHIP IN A COMPANY**

### **Section 148**

#### **TERMINATION OF MEMBERSHIP BY THE COURT**

(1) A member may not directly withdraw from a company. He may, however, propose that the court terminate his participation in the company if he cannot be reasonably required to remain in the company any longer. The provisions of Section 113 subsections 5 and 6 above shall apply *per analogiam*.

(2) The issue of a bankruptcy order against the property of the member or the dismissal of the petition in bankruptcy due to insufficient property of the member shall have the same effects as the termination of his participation in the company by the court.

(3) In case the memorandum of association excludes the transferability of the ownership interests or if the transfer thereof requires an approval by the general meeting, the attachment of the ownership interest shall have the same effects as the termination of the participation of the ownership interest in the company by the court.

(4) If bankruptcy proceedings against the property of the member, whose participation in the company was terminated pursuant to subsection 2 above, are terminated, and such a termination is not due to the completed implementation of the distribution scheme or to insufficient property, the participation of the member on the company shall be resumed, provided that the company has not yet disposed of its ownership interest as provided in Section 113 subsections 5 and 6 above. If the company has paid the settlement share in the meantime, it may claim its refund. The provision above shall apply, *mutatis mutandis*, also to all those cases, in which the execution proceedings are suspended by a final and non-appealable decision of the court pursuant to special legislation.

**Section 149**  
**MEMBER'S EXPULSION**

A company may request that the court expel a member who is in serious breach of its duties, even though this member has been reminded of its duties and has been warned in writing of the possibility of its expulsion. Members, whose contributions in the company achieve not less than 50% of the registered capital, must approve such a request. The provisions of Section 113 subsection 4 above shall hereby not be affected. The provisions of Section 113 subsections 5 and 6 above shall apply *per analogiam*.

**Section 150**  
**SETTLEMENT**

(1) The member whose membership was terminated by the court or who has been expelled, shall be entitled to a settlement share (Section 61 subsections 2 and 3 above). The same right shall inure to the benefit of the heir or the successor-in-law of the member, unless the ownership interest has been transferred thereto (Section 116 above).

(2) The settlement share shall be calculated as a ratio between the paid-up contribution of the former member and the paid-up contributions of all the other members, unless the memorandum of association provides otherwise.

**5**  
**WINDING-UP AND LIQUIDATION OF THE COMPANY**

**Section 151**

In addition to cases referred to in Section 68 above, the company shall be wound up:

- a) by the court's ruling in accordance with the provisions of Section 152 below,
- b) for other reasons provided for in the memorandum of association.

**Section 152**

The members and, if so provided by the memorandum of association or the articles of association, also the executive directors, may ask the court to wind up the company on the grounds and at the terms and conditions stipulated by the law and set forth in the memorandum of association or in the establishment deed, or in the articles of association, as appropriate.

**Section 152a**

(1) The provisions of Section 218a through 218k below shall apply, *mutatis mutandis*, to mergers and takeovers of companies, unless the law provides otherwise.

(2) The merger or the takeover agreement shall be approved, upon proposal of the executive directors, by the general meetings of all the companies to be deleted and, in case of a takeover, also by the general meeting of the successor company. The decisions above shall be passed by the general meeting by a two-thirds majority of all the members, unless the memorandum of association requires a higher majority.

(3) If the memorandum of association of a company to be deleted as a result of the merger or takeover admits the transfer of the ownership interest to a third party and the successor company does not admit any such a transfer, the approval of the merger or takeover and the merger or takeover agreements by all the members of the company to be deleted shall be required.

(4) The documents referred to in Section 218c subsection 2 below shall be sent to the members of the company together with the invitation to the general meeting. Such documents need not be available for their inspection in the registered office of the company; the provisions of Section 218a subsection 5 and Section 218c subsection 4 below shall not apply. The executive directors of the company shall be obliged to disclose, since the date of convocation of the general meeting, to any member upon its request relevant information and explanations concerning the merger or the takeover. The members must be advised of their entitlement above in the invitation to the general meeting.

(5) If there is no supervisory board, the provisions of Section 218b subsection 2 below shall not apply. The report of the executive directors shall not be required if all the members waive the same either in writing or in form of a note in the minutes from the general meeting.

(6) The review of the draft merger or takeover agreement by the auditor pursuant to Section 218a subsections 2 through 4 below shall be necessary only if this is required by any of the members of the companies to be merged or taken over. The costs of such a review shall be borne by the company. If the company rejects the request of the member and the member insists that a note thereof is made in the minutes from the general meeting, which is supposed to decide the merger or the takeover, such a note shall be regarded as a protest against the decision of the general meeting concerning the merger or the takeover.

**Section 152b**

The provisions of Section 152a above and Sections 218m through 218o below shall apply to the split of the companies *mutatis mutandis*.

**Section 153**

(1) The general meeting shall appoint a liquidator prior to starting the liquidation of the company.

(2) Upon the winding-up of the company with liquidation each member shall be entitled to share the liquidation balance. Such share shall be calculated as a ratio between the paid-up contribution of the member concerned and the paid-up contributions of all the other members, unless the memorandum of association provides otherwise.

**PART V**  
**JOINT-STOCK COMPANIES**

**1**  
**FUNDAMENTAL PROVISIONS**

**Section 154**

(1) A joint-stock company shall be a company, the registered capital of which is composed of a certain number of shares of a certain nominal value. The company shall be liable with its entire property for any breach of its obligations. The shareholder shall not bear any liability for the obligations of the company.

(2) The business name of the company must include the words „akciová spoločnosť“ or the abbreviation „akc. spol.“ or „a.s.“.

(3) A joint stock company may either be a private or a public joint stock company. Those companies shall be public, which issued all the shares or a part thereof under a public call for the

subscription of shares or the shares of which were accepted for trading by a stock exchange. The shares shall be deemed to have been issued under a public call for the subscription of shares if they are all subscribed by a securities broker under a shares issue facilitation agreement, unless the agreement contains an undertaking of the securities broker to sell the shares to predetermined parties identified in the agreement.

(4) A public joint stock company, which issued all the shares as registered shares, has not more than 50 shareholders and its shares have not been accepted for trading by a stock exchange, may, subject to the approval of all the shareholders, decide to transform into a private joint stock company. In order to determine the number of shareholders, reference shall be made to names of shareholders appearing in the register of shareholders. A decision to transform a public joint stock company into a private joint stock company shall be filed into the Collection of Deeds and the company shall publish such a decision in periodic press with nation-wide coverage providing stock exchange information. If after passing such a decision the company increases its registered capital under a public call for the subscription of shares, or its shares are accepted for trading by a stock exchange, its status shall revert back to the public joint stock company.

(5) The term “ public call for the subscription of shares” shall mean a public call for the subscription of shares disclosed in any manner whatsoever and addressed to an undetermined group of parties, identity of which is not known in advance.

#### **Section 155**

(1) A share represents the rights of the shareholder to participate, pursuant to the law and the articles of association of the company, in the company’s management, to share its profits and its liquidation balance upon its winding up with liquidation. The rights above are attached to the share as security, unless the law provides otherwise.

(2) A share may either be issued as a paper security (hereinafter referred to only as “paper share”) or as a book-entry security (hereinafter referred to only as “book-entry share”), unless the law provides otherwise.

(3) The share shall contain the following essentials:

- a) the business name and the registered office of the company,
- b) the nominal value of the share,
- c) the indication as to whether it is a registered share or a bearer share. If it is a registered share, the business name (designation), registered office and identification number of the shareholder (if it is a legal entity), or the name, residence and birth certificate number of the shareholder (if he is an individual). If the shareholder is a non-resident legal entity, the identification number shall be indicated only if assigned. If the shareholder is a non-resident individual, his date of birth shall be indicated if no birth certificate number has been assigned,
- d) the registered capital and the number of all the shares of the company outstanding at the time of its issue,
- e) the date of issue.

(4) Paper shares shall contain, in addition to the above, also a serial number and the signature(s) of the director(s) authorized to act on behalf of the company at the time of its issue. Paper shares shall also include a specification of the rights attached thereto, at least by reference to the provisions of the articles of association.

(5) If several classes of shares are outstanding, the shares must specify the class thereof. Shares, to which no special rights are attached (hereinafter referred to only as “ordinary shares”) need

not specify any class.

(6) It shall not be allowed to issue classes of shares other than those set forth in this Act.

#### **Section 156**

(1) A share may either be a registered or a bearer share. The articles of association may provide for the right of shareholders to exchange registered shares against bearer shares and vice versa.

(2) A registered share may be issued as a paper share or a book-entry share. A bearer share may only be issued as a book-entry share.

(3) The transfer of book-entry shares shall be carried out pursuant to a special act.

(4) The transfer of registered paper shares will be carried out by endorsement and delivery of the shares. The endorsement shall specify the business name (designation), registered office and identification number, if any, of the legal entity or the name, residence and birth certificate number of the individual, to whom the share is being transferred, shall include the signature of the transferor and indicate the date of transfer of the registered share. If the shareholder is a non-resident individual, the date of birth shall be indicated instead of the birth certificate number, if not assigned. The provisions of a special act regulating bills of exchange shall apply to the endorsement, *mutatis mutandis*.

(5) A registered share may be registered in the name of two or more persons. The rights attached to the share may be exercised by any of such persons or by another party authorized thereby.

(6) If registered shares are outstanding, the company shall keep a register of shareholders in accordance with this Act and special legislation. The register of shareholders shall contain the following details: serial numbers of the shares, their class and nominal value, business name (designation), registered office and identification number, if any, of the shareholder (which is a legal entity) or the name, residence and birth certificate number of the shareholder (who is an individual). If the shareholder is a non-resident individual, the date of his birth may be specified instead of the birth certificate number, if none has been assigned. The rights attached to the registered share may be exercised vis-a-vis the company by the party recorded in the register of shareholders. The register of shareholders shall not be open to the general public. Any shareholder may request the company to issue an abstract from the register of shareholders with the data concerning such a shareholder, at its own expense.

(7) The transfer of the registered share shall be effective vis-a-vis the company upon registration of the transferee in the register of shareholders. The company shall provide for the registration of the transferee promptly after the submittal of a proof of transfer. The company shall be liable for any damage, which might be suffered by the transferring shareholder, and it shall be also liable towards the transferee for any damage due to the breach of the duty above.

(8) The provisions of subsections 6 and 7 above shall not apply if the register of shareholders is substituted, pursuant to the law or the articles of association, by a register of book-entry securities kept pursuant to a special act.

(9) The articles of association may restrict, but not exclude the transferability of the registered shares. If the articles of association make the transferability of registered shares subject to an approval of the company, they must also specify the grounds, on which the company may refuse to give its approval and the time period, by which the company must either accept or dismiss a request of shareholder, and advise such a decision to the requesting shareholder. Unless the articles of association provide otherwise, the decision, whether to approve or not a request of transfer of registered shares, shall be taken by the board of directors. The decision of the company, by which the approval is granted or refused, shall be advised to the requesting

shareholder in writing. If the relevant body of the company fails to take a decision with respect to the request of the shareholder within the term prescribed by the articles of association, the request shall be deemed approved. The company shall be liable for the damage, which the shareholder might suffer as a result of breach of the duties above, while if the approval is refused, the company shall be obliged to purchase such shares at a fair price, if the shareholder so requests. The shareholder may exercise its put option above within one month after receipt of a decision refusing the approval of the transfer of shares, otherwise such option shall terminate. The articles of association of a company, the shares of which have been accepted for their trading by a stock exchange, shall not restrict the transferability of the shares.

(10) If the articles of association make the transferability of registered shares subject to an approval of the company, the approval of the company shall also be required for the establishment of a pledge over such shares, otherwise the pledge shall not be established. The provisions of subsection 9 above shall apply, *mutatis mutandis*, to the approval/disapproval and the notice thereof. If the articles of association require other conditions to be satisfied for the transfer of registered shares, such conditions must be satisfied also for the establishment of the pledge. No approval of the company or, as appropriate, satisfaction of other conditions, shall be required for the transfer of the pledged registered shares upon enforcement of the pledge.

#### **Section 156a** **RELEVANT DATE**

In cases defined in this Act, the rights of the shareholder may be exercised vis -a-vis the company only by a party, which is authorized to exercise the same as of the relevant date determined by the law or by the articles of association.

#### **Section 157**

(1) The articles of association shall determine the nominal value of all classes of shares, which are to be issued. The aggregate of the nominal values of such shares must be equal to the registered capital. The nominal value of a share must be expressed by a positive integer number. The nominal value of shares may be denominated in Slovak Crowns, if the registered capital is denominated in Slovak Crowns, or it may be denominated in EUR, if the registered capital is denominated in EUR. A joint stock company may issue shares having different nominal values, unless this Act provides otherwise.

(2) The issue price of a share shall not be lower than the nominal value of the share. If the issue price is higher than the nominal value of the share, any amount in excess of the nominal value shall be called “share premium”. If at the time of payment of the issue price any payment so made is not sufficient to cover both the nominal value or its fraction and the share premium, it shall be used preferably to cover the share premium.

(3) The company may issue bulk shares. A bulk share is a substitute for more shares of the same class having the same nominal value. The company shall be obliged to issue to the shareholder the individual shares substituted by the bulk share, either as book-entry or paper securities. The articles of association shall regulate the procedure above.

#### **Section 158**

*rescinded – Act 500/2001*

#### **Section 159**

(1) The articles of association may provide for the issue of a class of shares with preference rights concerning dividends (priority shares), provided that the aggregate of their nominal value does not exceed 50% of the registered capital.

(2) The company shall not be allowed to shares giving the right to a certain interest irrespective of the company’s performance.

(3) The articles of association may provide for the issue of priority shares, which do not entitle the shareholders to voting rights at general meetings. However, such shareholders shall have all the other rights attached to shares. Since the date following the one, on which the general meeting decided that no priority dividends would be paid, or on which a default in the payment of the priority dividends occurred, the shareholders shall have voting rights up to the date, when the general meeting decides the payment of priority dividends or up to the date of their actual payment, in case of default of the company in the payment of such priority dividends. The holders of priority shares shall be entitled to vote at the general meeting, which decides the payment of priority dividends without any limitation whatsoever.

#### **Section 160**

(1) The company may, by a decision of the general meeting, issue bonds to which the right to their exchange against the shares of the company (hereinafter referred to only as “convertible bonds”) or the right to a preferential subscription of shares of the company (hereinafter referred to only as “priority bonds”) is attached, provided that the general meeting decides, in parallel, a conditional increase of the registered capital. The provisions of Section 202 subsection 1 below shall apply to the decisions of the general meeting concerning the issue of convertible or priority bonds.

(2) If the general meeting delegates to the board of directors the authority to issue new shares at the terms set out in the articles of association, it may also delegate to the board of directors the authority to issue convertible or priority bonds at the terms set out in the articles of association, provided that the board of directors decides, in parallel, a conditional increase of the registered capital.

(3) Both the right to exchange convertible bonds against shares of the company and the right to a preferential subscription of shares of the company may be transferred as separate rights.

(4) If a party, to which the right to exchange convertible bonds against shares of the company was transferred as a separate right, exercises such a right, the holder of the convertible bond shall not be entitled to the redemption of the nominal value of the convertible bond and to the payment of any interest accruing thereon.

(5) The shareholders of the company shall have preemption rights to the acquisition of convertible and priority bonds issued by the company. The provisions of Section 204a below shall apply *mutatis mutandis*.

(6) Special legislation shall apply to convertible and priority bonds, unless this Act provides otherwise.

#### **Section 161**

(1) The company shall not be allowed to subscribe shares, which make up its own registered capital.

(2) If shares of the company are subscribed by a party acting in its own name, but for the account of the company, the shares shall be deemed to be subscribed for its own account and the party shall be obliged to pay up the issue price of such shares.

(3) The founder of the company (or, in case of increase of the registered capital, the members of the board of directors) shall be liable jointly and severally to pay up the issue price of any shares, which were subscribed in contrast with the provisions of subsection 1 above, and shall be liable jointly and severally for the payment of the issue price by the parties referred to in subsection 2 above.

(4) The founder or the director may be discharged of its liability pursuant to subsection 3 above after providing evidence showing that he was not and could not be aware that the shares were subscribed in contrast with the provisions of subsection 1 above or by a party acting in its own name, but for the account of the company.

(5) If shares are subscribed in breach of the provisions of subsection 1 above, following the registration of the registered capital into the Companies Register it shall not be admissible to request a determination that the subscription of shares made in contrast with subsection 1 above be void.

#### **Section 161a**

(1) The company or a party acting in its own name, but for the account of the company shall be allowed to acquire the shares of the company only subject to the conditions set forth in this Act.

(2) The company or a party acting in its own name, but for the account of the company shall be allowed to acquire the shares of the company as provided in subsection 1 above in the following instances:

- a) the acquisition of shares is approved by the general meeting, which defines the terms, at which the company shall acquire its own shares, including but not limited to the maximum admissible number of shares, the time period, by which the company must acquire the shares (which shall not be longer than 18 months), and, in case of acquisition of shares against consideration, also the lowest and the highest price, at which the shares may be acquired,
- b) the nominal value of all the own shares, which the company holds (including shares acquired by a third party in its own name, but for the account of the company), shall not exceed 10% of the registered capital,
- c) as a result of acquisition of the shares, the equity of the company shall not drop below the aggregate of the registered capital and the reserve fund (Section 217 below), plus, as appropriate, any other fund, the establishment of which is required by the law,
- d) the issue price of the shares to be acquired has been fully paid up.

(3) The board of directors shall ensure that the conditions set forth in subsections 2b) through d) above are satisfied.

(4) The articles of association may provide that the provisions of subsection 2a) above shall not apply if the acquisition of the own shares is strictly necessary to avert a material damage, which imminently threatens the company. In such a case the board of directors shall inform the general meeting, at its next meeting, of the reasons and aims of acquisition of the own shares, of the number and aggregate nominal value of the shares so acquired, of the percentage of the registered capital, which is made up by such shares, and of the price paid by the company for the shares so acquired.

(5) The articles of association may provide that the provisions of subsection 2a) above shall not apply to the acquisition of the own shares of the company for the purpose of their transfer to the staff of the company. The shares so acquired must be transferred to the company staff within 12 months from the date of their acquisition by the company.

#### **Section 161b**

(1) The company shall be free to acquire its own shares regardless of the satisfaction of conditions contained in Section 161a subsection 2 above, in the following instances:

- a) it reduces its registered capital in accordance with this Act and the articles of association,
- b) when it takes over all the rights and duties of the previous holder of such shares as its successor-in-law,
- c) such shares are acquired by the company in performance of its duty prescribed by the law or under a decision of the court aimed to protect minority shareholders, or
- d) the issue price of such shares has been fully paid up and the company acquires the same free of charge, or
- e) the issue price of such shares has been fully paid up and the company acquires such shares in a public auction organized within the framework of enforcement of a decision of the court, by which the company was trying to recover its debts payable by the holder of the shares, or
- f) the shares are acquired by the company as provided in Section 177 subsection 5 below.

(2) The company shall be obliged to dispose of the shares acquired under subsection 1b) through f) above within three years from the date of acquisition. The provision above shall not apply if the aggregate nominal value of all the own shares acquired by the company, including the shares, which were acquired by a party acting in its name, but for the account of the company, does not exceed 10% of the registered capital of the company. In case of failure to dispose of the shares by the term above, it shall reduce the registered capital by the amount equal to their aggregate nominal value and withdraw the shares from circulation. If the company fails to reduce the registered capital, the court may order its winding-up and liquidation, even *ex officio*. The provisions of Section 68 subsections 6 and 7 above shall apply *mutatis mutandis*.

#### **Section 161c**

(1) Any action at law, which is in contrast with the provisions of Sections 161a and 161b above shall be valid.

(2) Any shares acquired in contrast with the provisions of Sections 161a and 161b above must be disposed of within one year from the date of their acquisition. If the company fails to dispose of such shares by the term above, it shall reduce the registered capital by the amount equal to their aggregate nominal value and withdraw the shares from circulation. If the company fails to reduce the registered capital, the court may order its winding-up and liquidation, even *ex officio*. The provisions of Section 68 subsections 6 and 7 above shall apply *mutatis mutandis*.

#### **Section 161d**

(1) If the company holds its own shares, it shall not be allowed to exercise the voting rights attached to such shares. If the company posts its own shares among the assets in its balance sheet, it must establish a special reserve fund for the same amount, which may either be reduced or cancelled, but only after all the own shares or any part thereof shall have been transferred to a third party or the registered capital shall have been reduced through withdrawal of all the own shares or a part thereof from circulation. The provisions of Section 217 below shall hereby not be affected.

(2) If the company or parties acting in their own names, but for the account of the company acquire own shares of the company, the company shall disclose in the report referred to in

Section 192 subsection 2 below:

- a) the reasons leading to the acquisition of the own shares by the company or by a party acting in its own name, but for the account of the company throughout the accounting period,
- b) the number and the nominal value of the own shares acquired and subsequently transferred to a third party by the company or by a party acting in its own name, but for the account of the company throughout the accounting period, and the percentage of the aggregate nominal value of such shares on the registered capital,
- c) in case of acquisition or transfer of the own shares to a third party against consideration, the consideration, against which the company acquired or transferred the shares,
- d) the number and the aggregate nominal value of shares, which were acquired and are held by the company or by a party acting in its own name, but for the account of the company, and the percentage of the aggregate nominal value of such shares on the registered capital.

#### **Section 161e**

- (1) The company shall not be allowed to extend advances, loans, borrowings or securities in connection with the acquisition of its shares by third parties.
- (2) The provisions of subsection 1 above shall not apply to any actions at law, which are taken in the ordinary course of business by banks, and to actions at law taken in connection with the acquisition of shares by the staff of the company or for their account, provided that as a result thereof the equity of the company does not drop below the registered capital plus the reserve fund, which the company must establish by the law.

#### **Section 161f**

- (1) The provisions of Sections 161a, 161b subsection 1, Sections 161d and 161e above shall apply, *mutatis mutandis*, also to the establishment of a pledge over the own shares of the company.
- (2) The provisions of Sections 161, 161a subsections 1 through 4, Section 161 subsections 1b) through f) and subsection 2, Sections 161c through 161e and Section 161f subsection 1 above shall apply, *mutatis mutandis*, also to the subscription and acquisition of or establishment of a pledge over the shares of a controlled party by its controlling party.
- (3) The provisions of subsection 2 above shall not apply if the controlled party:
  - a) acts for the account of a third party, unless it acts for the account of a controlling party or a company, which is controlled by the same controlling party,
  - b) is a securities broker and such transactions are carried out in the normal course of its business as securities broker, or
  - c) acquires the status of controlled party only following the acquisition of shares.
- (4) It shall not be admissible to exercise the voting rights attached to the shares acquired by the controlled party in accordance with subsection 3 above. The shares acquired in accordance with subsection 3 above shall be regarded, for the purposes of determination, whether the condition set out in Section 161a subsection 2b) above is satisfied or not, as the own shares of the controlling party.

- (1) A joint-stock company may be established by one founder, provided that the founder is a legal entity, otherwise, by two or more founders.
- (2) If the company is established by two or more founders, a founders' deed shall be executed. If the company is established by a sole founder, an establishment deed shall be executed in stead of a founders' deed. Both the founders' deed and the establishment deed must be executed in form of a notarial deed. Draft articles of association shall be attached to the founders' deed or the establishment deed.
- (3) The value of the company's registered capital may not be less than 1,000,000 Slovak Crowns, or 25,000 EUR, if the nominal value of the shares is denominated in EUR.

#### **Section 163 FOUNDERS' DEED**

- (1) The founders' deed (establishment deed) must include the following essentials:
  - a) the business name, the registered office of the company and its scope of business (activities),
  - b) the proposed amount of the registered capital,
  - c) the number of shares, their nominal value, and the form and shape thereof. If shares of different classes are to be issued, then also their designation and a specification of the rights thereto attached. If registered shares with restricted transferability are to be issued, also a note of such restrictions,
  - d) the issue price, at which the company issues the shares,
  - e) the number of shares subscribed by the individual founders,
  - f) a description of the property to be contributed as a contribution in kind and its value in money terms (which shall be set-off against the issue price of the shares subscribed by the founder), in case a founder undertakes to make a contribution in kind to the company,
  - g) identity of the contributions custodian referred to in Section 60 subsection 1 above,
  - h) an estimate of the expenses of the company associated with the establishment and incorporation of the company.
- (2) If a joint-stock company is established under a public call for the subscription of shares, the founders' deed (establishment deed) must also specify the following:
  - a) the place and time of share subscription,
  - b) the procedure in case of subscription of shares in excess of the proposed registered capital, in particular a specification as to whether the founders shall allow subscription of additional shares following the subscription in full of the proposed registered capital. If subscription of additional shares is allowed, a specification as to whether the subscription of additional shares shall cause an increase of the proposed registered capital or whether the number of the shares subscribed by the individual subscribers shall be reduced pro rata to their subscriptions, while maintaining the proposed registered capital, or whether there will be a partial increase of the proposed registered capital. The founders' deed may specify also other procedure to be followed in case of subscription of shares in excess of the proposed registered capital,
  - c) the place and the term for the payment of fractions of the subscribed shares and the percentage thereof,
  - d) the procedure for convening the constituent general meeting of subscribers.
- (3) Any benefits, which might be granted to persons involved on the establishment of the company and on the obtainment of its permits and authorizations must be agreed in the founders'



deed. Benefits other than above shall not be allowed.

## **ESTABLISHMENT OF A COMPANY UNDER A PUBLIC CALL FOR THE SUBSCRIPTION OF SHARES**

### **Section 164**

- (1) The founders shall ensure that any registered capital in excess of their contributions is subscribed under a public call for the subscription of shares. The call must contain the essentials specified in the founders' deed (Section 163 above).
- (2) A public call for the subscription of shares shall be published in an appropriate manner. The clauses of such a call may only be changed if the subscription of shares fails within a stipulated period of time.
- (3) A draft articles of association must be available for its review at every place of subscription.

### **Section 165**

- (1) A share shall be subscribed by an entry into the list of subscribers or by receipt of a written statement of the subscriber. The entry into the list of subscribers or the written statement of the subscriber must contain at least the following essentials:
  - a) the business name (designation), registered office and identification number, if any, of the subscriber (if it is a legal entity), or the name, residence and birth certificate number of the subscriber (if he is an individual). If the subscriber is a non-resident individual, his date of birth shall be specified, if no birth certificate number has been assigned,
  - b) the number, nominal value, form or, as appropriate, the class of the subscribed shares,
  - c) the issue price of the subscribed shares,
  - d) a signature of the subscriber.
- (2) No shares may be subscribed against contributions in kind under a public call for the subscription of shares.
- (3) If a subscriber undertakes to make a contribution in cash, the subscriber shall be obliged to pay no less than 10% of the nominal value of the subscribed shares by a transfer to the bank account specified by the founder in the public call, by the date specified therein. In case of any default of the subscriber the subscription shall not be effective.

### **Section 166**

- (1) After the proposed registered capital shall have been entirely subscribed, the founders shall reject any further subscriptions, unless the founders' deed or the establishment deed provide otherwise.
- (2) If shares are subscribed in excess of the proposed registered capital, and the founders accept, in accordance with Section 162 subsection 2 above, the subscription of the shares by the individual subscribers only to a certain extent, the founders shall be jointly and severally liable to refund to the subscribers without undue delay their pledged contributions or fractions thereof, which have been paid up at the time of subscription of shares, together with interest accruing thereon, at the rate normally charged by banks in the registered office of the company under current account agreements in force as of the date on which the liability above arose.

### **Section 167**

- (1) The subscription of shares shall not be effective if on the date of expiration of the term set for

the subscription shares the proposed registered capital has not been fully subscribed, unless the founders, or some of them, subscribe the missing nominal value of shares within one month thereafter.

- (2) If the subscription of shares is ineffective, the rights and the duties of subscribers arising out of the subscription of shares will be extinguished and the founders shall bear joint and several liability for the refund to the subscribers, without any undue delay, of their contributions or fractions thereof, which were paid up at the time of subscription of shares. If there are any contributions in cash, the founders shall refund the same together with interest accruing thereon, at the rate normally charged by banks in the registered office of the company under current account agreements in force as of the date on which the liability above arose.

### **Section 168**

- (1) The subscribers shall be obliged to pay up the subscribed shares at the terms specified in the list of subscribers. The subscribers shall be obliged to pay up at least 30% of the nominal value of the subscribed shares, which are to be settled through contributions in cash, by the date of the constituent general meeting.
- (2) Prior to the registration of the company into the Companies Register, the founders shall issue to each subscriber a written certificate confirming that its contribution or its fraction has been paid up. The certificate above shall include, but not be limited to:
  - a) the business name (designation), registered office and identification number, if any, of the subscriber (which is a legal entity), or the name, residence and birth certificate number of the subscriber (who is an individual). If the subscriber is a non-resident individual, his date of birth shall be specified, if no birth certificate number has been assigned,
  - b) the number, nominal value, form or, as appropriate, the class of the subscribed shares,
  - c) the issue price of the subscribed shares,
  - d) the extent, to which the contributions have been paid up,
  - e) the terms of payment for the subscribed shares,
  - f) signature(s) of the founder(s).
- (3) Following the registration of the company into the Companies Register, the company shall replace this certificate by an interim certificate or by a share, provided its nominal value has been fully paid up.

## **CONSTITUENT GENERAL MEETING**

### **Section 169**

- (1) Subscribers, who have fulfilled their duties under Section 165 and Section 168 above, shall be entitled to take part in the constituent general meeting. The founders shall convene the constituent general meeting so that it is held not later than 60 days from the date on which the proposed registered capital has been subscribed.
- (2) If the founders fail to convene the constituent general meeting by the time period above, the subscription of shares shall be treated as ineffective and the provisions of Section 167 subsection 2 above, shall apply.

### **Section 170**

- (1) The constituent general meeting may only be held on condition that the aggregate nominal value of the subscribed shares is equal to the proposed registered capital and that no less than

30% of the nominal value of the contributions in cash has been paid up.

(2) The constituent general meeting shall constitute quorum if attended by subscribers, which subscribed shares having aggregate nominal value of not less than 50% of the overall nominal value of the subscribed shares, provided that such subscribers have fulfilled their duty to pay the specific percentage of the nominal value of the subscribed shares. Upon its opening, the constituent general meeting shall be chaired by a founder designated by the other founders or by such founder's deputy, until the time a chairman of the constituent general meeting shall have been elected.

(3) Any decision of the constituent general meeting must be approved by subscribers, which subscribed shares having aggregate nominal value equal to not less than 50% of the nominal value of all the shares subscribed by the subscribers attending the constituent general meeting. A decision taken by such a majority may define other instances, in which a different majority or the consent of all attending subscribers with voting rights shall be required.

#### **Section 171**

(1) The constituent general meeting shall:

- a) take a decision concerning the company's establishment,
- b) approve the articles of association,
- c) appoint those company bodies, which the general meeting is authorized to appoint according to the articles of association.

(2) Save for the increase of the registered capital, the constituent general meeting may only depart from the founders' deed or the establishment deed with the approval of all the attending subscribers.

(3) Minutes shall be taken from the constituent general meeting in form of a notarial deed. The minutes from the constituent general meeting shall contain the resolutions passed by the constituent general meeting and a full version of the approved articles of association. Attached to the minutes there shall be the attendance list identifying the attending subscribers. The provisions of Section 185 subsection 1 below shall apply, *mutatis mutandis*, to the data to be included in the attendance list.

### **ESTABLISHMENT OF A COMPANY WITHOUT A PUBLIC CALL FOR THE SUBSCRIPTION OF SHARES**

#### **Section 172**

(1) If the founders agree, in the founders' deed, to pay up the entire registered capital in an agreed-upon ratio, no public call for the subscription of shares and no constituent general meeting shall be required.

(2) If a company is established without a public call for the subscription of shares, the founders' deed must contain the decisions of the founders referred to in Section 171 subsection 1 above. The notarial deed containing the founders' deed must also contain the approved articles of association.

(3) The provisions of subsection 1 and subsection 2 above shall apply *per analogiam* if the company is being established by a sole legal entity without a public call for the subscription of shares.

### **ARTICLES OF ASSOCIATION**

#### **Section 173**

(1) The articles of association shall specify:

- a) the business name and the registered office of the company,
- b) the scope of business (activities),
- c) the amount of the registered capital and the terms of payment for the shares and, as appropriate, the conditional registered capital if the general meeting decides a conditional increase of the registered capital (Section 207) or the authorized registered capital if the general meeting authorizes the board of directors to increase the registered capital (Section 210),
- d) the number, the nominal value and the form of shares and also an indication as to whether the shares are registered shares or bearer shares. If shares of both forms are outstanding, the number of registered shares and the number of bearer shares, together with the restrictions of transferability of registered shares, if any,
- e) the procedure of convocation of general meetings, the scope of powers thereof, and its decision-making procedures,
- f) the number of members of the board of directors, the supervisory board and other bodies, as well as the definition of the scope of their powers and their decision-making procedures,
- g) the initial amount of the reserve fund and the limit, up to which appropriations must be made to such reserve fund, plus the procedure of supplementing the reserve fund,
- h) the rules governing the distribution of the company's profits (dividend policies),
- i) the consequences of any default in the payment of the subscribed shares,
- j) the procedure for increasing and reducing the registered capital,
- k) the procedure for amending and modifying the articles of association,
- l) other data prescribed by the law.

(2) If the general meeting passes a decision, which results in an amendment to the clauses of the articles of association, such a decision shall be treated as a decision to amend the articles of association, provided that it was adopted in a manner, which is required by the law and by the articles of association for adopting decisions to amend the articles of association.

(3) Following each amendment to the articles of association, the board of directors shall, without undue delay, prepare a full version of the articles of association, for the completeness and accuracy of which it shall be liable. In case of conditional increase of the registered capital, the board of directors shall prepare full version of the articles of association specifying the amount of the registered capital, which ensues from the exercise of the rights attached to convertible or priority bonds by their holders in the course of the previous calendar year and within one month from the last day of that calendar year.

#### **Section 174**

If necessary, the articles of association shall also regulate:

- a) the issue of different classes of shares, their specification, number and the rights attached thereto, and,
- b) the rules for the issue of bonds referred to in Section 160 above and the rights attached thereto.

### **INCORPORATION OF THE COMPANY**

#### **Section 175**

(1) Prior to the incorporation of the company, the entire registered capital must be subscribed and at least 30% of the contributions in cash must be paid up. The provisions of Section 59 subsection 2 above shall hereby not be affected.

(2) A request of registration of the company into the Companies Register shall be filed by the board of directors and undersigned by all the directors.

### **INTERIM CERTIFICATE**

#### **Section 176**

(1) If the subscriber does not pay up the issue price of shares subscribed thereby in full prior to the registration of the company into the Companies Register, the company shall issue to the shareholder an interim certificate promptly following its registration into the Companies Register.

(2) The interim certificate shall contain the following essentials:

- a) the business name and the registered office of the company,
- b) the registered capital of the company
- c) the business name (designation), registered office and identification number of the shareholder (if it is a legal entity), or the name, residence and birth certificate number of the shareholder (if he is an individual). If the shareholder is a non-resident legal entity, the identification number shall be indicated only if assigned. If the shareholder is a non-resident individual, his date of birth shall be indicated if no birth certificate number has been assigned,
- d) the number, nominal value and form of the subscribed shares replaced by the interim certificate, and their class, as appropriate,
- e) the paid up fraction of the issue price of the shares, which are replaced by the interim certificate, and the terms of payment of the issue price,
- f) date of issue of the interim certificate,
- g) the signature(s) of the director(s) authorized to act on behalf of the company at the time of issue of the interim certificate, if it is issued as a paper security.

(3) The interim certificate shall be a registered security giving the rights, which are attached to the shares replaced thereby, and imposing the duty to pay up the issue price thereof. The provisions concerning the transfer of registered shares shall apply, *mutatis mutandis*, to any transfer of the interim certificate. If a shareholder transfers its interim certificate to another party prior to the payment of the nominal value of the underlying shares in full, such a shareholder shall be liable for the payment of the remaining fraction of the nominal value of the subscribed shares.

(4) If the interim certificate is issued on the name of several parties, the provisions of Section 156 subsection 5 above shall apply *per analogiam*. All such parties shall bear joint and several liability for the payment of the nominal value of the underlying shares.

(5) The joint-stock company shall replace interim certificates by shares after the nominal value of the shares shall have been fully paid.

#### **Section 176a**

(1) Upon registration of the joint stock company into the Companies Register, the subscribers shall acquire the rights of shareholders of the joint stock company to the extent of the shares subscribed thereby.

(2) The provisions of subsection 1 above shall apply, *mutatis mutandis*, also upon increase of the registered capital of the company, unless the law makes the increase of the registered capital effective as of an earlier date.

(3) The exercise of the rights of shareholder may be restricted or suspended only if so provided in this Act or in a special act.

#### **Section 176b**

(1) No shareholder shall exercise its rights of shareholder to the detriment of the rights and legitimate interests of the other shareholders.

(2) The company shall provide for equal treatment of all the shareholders.

#### **Section 177**

(1) Each shareholder shall be obliged to pay up the issue price of the shares subscribed thereby by the date specified in the articles of association, but not later than one year from the date of the company's incorporation. The above shall not affect the provisions of Section 59 subsection 2 and Section 170 subsection 1 above.

(2) No shareholder may be discharged of its duty to pay up the issue price of the shares subscribed thereby. The above shall not affect the provisions of Section 176 subsection 3 above concerning the reduction of the registered capital. No shareholder shall be allowed to take a unilateral action and set-off any of its claims towards the company against the claim of the company to receive the payment of the issue price of shares subscribed thereby.

(3) If any shareholder is in breach of its duty to pay up the issue price of the shares subscribed thereby or any fraction thereof as provided in subsection 1 above, it shall pay default interest accruing on the overdue amount at the rate set forth in the articles of association, or, if not specified, 20% p.a.

(4) In case of default in the payment of the issue price or any fraction thereof, the board of directors shall send to the shareholder a written reminder asking to fulfill the duty above by the term specified in the articles of association, or, if not specified, within 60 days from the receipt of the written reminder of the board of directors. The reminder shall contain a warning of expulsion of the shareholder in accordance with subsection 5 below.

(5) If the shareholder fails to remedy the default by the term set forth in subsection 4 above, the company shall expel the shareholder from the company. The expulsion shall be decided by the board of directors. The decision to expel the shareholder from the company shall be served upon the shareholder and filed into the Collection of Deeds. The shares of the expelled shareholder shall pass over to the company on the date of receipt of the decision to expel the shareholder from the company.

(6) Following the transfer of the shares of the expelled shareholder or following the reduction of the registered capital by the shares of the expelled shareholder pursuant to Section 161b above, the company shall pay to the expelled shareholder an amount equal to the issue price paid up thereby, after deducting the expenses, which the company incurred as a result of the breach under subsections 1 and 3 above by the expelled shareholder, and any expenses related thereto. If the company transfers the shares of expelled shareholder at a price lower than the issue price

of the shares, it shall pay to the expelled shareholder only the amount in excess of the issue price of the shares, after deducting the expenses, which the company incurred as a result of the breach under subsections 1 and 3 above by the expelled shareholder, and any expenses related thereto. If the company reduces its registered capital by the shares of the expelled shareholder, it shall pay to the expelled shareholder the amount equal to the fraction of the issue price paid thereby, after deducting the expenses, which the company incurred as a result of the breach under subsections 1 and 3 above by the expelled shareholder, and any expenses related thereto.

(7) If there are any interim certificates outstanding, which were issued as paper securities, in the decision to expel the shareholder its interim certificate shall be declared null and void. The transferee, which acquired shares pursuant to subsection 6 above, shall be issued by the company a new interim certificate or the shares in case the issue price has been paid up in full.

### 3

#### Section 178

(1) Each shareholder shall be entitled to share the profits earned by the company (a dividend), appropriated for their distribution by the general meeting with reference to the company's performance. Unless the provisions of the articles of association concerning shares with different rights to dividends provide otherwise, the entitlement to dividends shall be determined as a ratio between the nominal value of shares held by the shareholder and the nominal value of shares held by all the other shareholders. The company may pay dividend to its shareholders only subject to the satisfaction of conditions set forth in Section 179 subsections 3 through 5.

(2) The right to the dividend may be transferred as a separate right since the date of the decision of the general meeting to distribute profits among the shareholders.

(3) The general meeting may determine that the members of the board of directors and of the supervisory board shall be paid shares of profits appropriated for their distribution (royalties).

(4) Unless a special act provides otherwise, the company employees may share the profits in accordance with the articles of association. The articles of association or the general meeting may determine that such shares of profits may be used by the staff to acquire shares of the company.

(5) The relevant date for the determination of the party authorized to exercise the right to dividends will be determined by the general meeting, which decides to distribute the profits of the company. If the general meeting fails to determine the relevant date, the date of exercise of the right to dividend by the shareholder shall be deemed to be the relevant date. As regards public joint stock companies, such a date can not be earlier than the 5<sup>th</sup> day following the date of the general meeting and not later than the 30<sup>th</sup> day from the date of the general meeting. If the general meeting of a public joint stock company fails to determine the relevant date, the relevant date shall be the 30<sup>th</sup> day from the date of the general meeting.

(6) The terms and the date of payment of dividends shall be determined by the general meeting, which decides to distribute the profits. As regards public joint stock companies, the dividends shall be due for payment not later than 60 days from the relevant date specified in subsection 5 above. The company shall pay dividends to shareholders at its own expense and risk.

(7) Any shareholder may inspect the minutes from the meetings of the supervisory board, while it shall keep confidential any information so obtained.

#### Section 179

(1) No shareholder shall be obliged to refund to the company dividends received in good faith.

(2) The company shall not be allowed to refund the contributions to the shareholders.

(3) At any time prior to the winding-up of the company, the company shall be allowed to distribute among the shareholders only the net profits:

a) reduced by the amount appropriated to the reserve fund or other funds, as appropriate, which the company has established under the law, and reduced by any loss brought forward,

b) increased by the profits brought forward (retained earnings) and the funds established out of profits, the use of which is not prescribed by the law.

(4) The company shall not be allowed to distribute among the shareholders net profits or other funds of the company in case the equity appearing in the approved ordinary financial statements is, or as a result of the distribution would be, lower than the registered capital plus the reserve funds, which the company can not use to make payments to shareholders under the law or according to the articles of association of the company.

(5) In particular, the company shall not pay to shareholders any interest on contributions made to the company or any advances for the account of dividends.

(6) The contributions shall not be deemed refunded to the shareholders in the following instances:

a) upon acquisition of its own shares by the company, if allowed by the law,

b) if an interim certificate is declared null and void.

(7) The provisions of subsections 2 through 5 above shall not apply to the reduction of the registered capital of the company, unless the law provides otherwise.

(8) Following the winding-up of the company with liquidation, the shareholders shall be entitled to share the liquidation balance.

(9) Any payments made to shareholders in contrast with this Act or a special act or the articles of association, shall be refunded by the shareholders to the company. The provisions of subsection 1 above shall hereby not be affected. The company shall not be allowed to waive the duty above and the board of directors shall enforce the same.

#### Section 180

(1) Each shareholder shall be entitled to attend general meetings, to vote thereon, to ask for information and explanations concerning the dealings of the company (or of the parties controlled by the company), which are pertinent to the agenda of the general meeting, and to make proposals. The number of shareholder's votes shall be determined as a proportion between the nominal value of the shares held thereby and the registered capital of the company. The voting procedure shall be governed by the articles of association. The articles of association or a special act may restrict the exercise of the voting rights by imposing a maximum number of votes per shareholder or by scaling the number of votes, depending on certain nominal values of the shares. Any restriction of the exercise of voting rights contained in the articles of association must apply equally to all the shareholders.

(2) If the shares are issued as book-entry securities, the date relevant for the purpose of exercise of the rights referred to in subsection 1 above shall be the date indicated on the invitation to or the notice of the general meeting. Such a date may correspond to the date of the general meeting or a previous date, however not more than five days prior to the date thereof. If the relevant date is not determined as provided above, the relevant date shall always be the date of the general meeting.

(3) The board of directors shall be obliged to disclose to any shareholder attending the general meeting upon its request full and true information and explanations pertinent to the agenda of the general meeting. If the board of directors is not able to disclose to the shareholder attending the general meeting full information or if the shareholder attending the general meeting requests so, the board of directors shall disclose such information to the shareholder in writing not later than 30 days from the date of the general meeting. Written information shall be sent by the board of directors to the address of the shareholder specified thereby, otherwise the information shall be disclosed in the registered office of the company.

(4) The disclosure may be refused only in case the same would result in a breach of the law or if following a careful assessment of the nature of such information it is clear that the disclosure thereof could cause prejudice to the company or to its controlled company. The disclosure of information concerning the management and the financial standing of the company may not be refused. The disclosure or refusal of the information shall be decided by the board of directors in the course of the general meeting. If the board of directors refuses to disclose the information, the supervisory board shall decide, whether the information shall be disclosed or not in the course of the general meeting and upon request of the shareholder. The chairman of the general meeting may interrupt the general meeting upon request of the supervisory board for the time necessary to take a decision in the matter. If the supervisory board disapproves the disclosure of the information, the court shall decide, upon request of the shareholder, whether the company is obliged to disclose the information or not.

(5) If the shareholder fails to request the supervisory board to decide, whether the information is to be disclosed or not, or if the supervisory board disapproves the disclosure of the information, the general meeting can not be declared void with respect to the issue, to which the information concerned was related due to the failed disclosure of the information.

#### **Section 181**

(1) Shareholder(s) holding shares with the aggregate nominal value equal to not less than 5% of the registered capital may make a written request containing a justification and asking to convene an extraordinary general meeting to discuss any matters proposed thereby. The articles of association may provide that the right above shall inure also to the benefit of shareholder(s) holding shares with the aggregate nominal value less than 5% of the registered capital.

(2) The board of directors shall convene the extraordinary general meeting so that it is held not later than 40 days from the receipt of the request above. The board of directors shall not be allowed to change the proposed agenda of the general meeting. The board of directors may supplement the proposed agenda of the general meeting only with the approval of the parties, which requested the convocation of the extraordinary general meeting pursuant to subsection 1 above.

(3) If the board of directors fails to fulfil the duty referred to in subsection 2 above, the court shall authorize the shareholder(s) referred to in subsection 1 above upon their proposal to convene, by the term set forth in subsection 2 above, a extraordinary general meeting and to take all the actions related thereto. At the same time the court shall appoint, upon proposal of the shareholders, the chairman of the general meeting, who shall chair the same up to the time of election of its chairman. If any registered shares are outstanding, the court shall, upon proposal of the shareholder(s) referred to in subsection 1 above, make the directors obliged to deliver to the authorized shareholders, in order to convene of the general meeting, the register of shareholders. The provisions of special Act shall apply, *mutatis mutandis*, in case of failure of

the board of directors to proceed as above by the date determined by the court.

(4) The invitation to or the notice of the extraordinary general meeting referred to in subsection 3 above shall contain the declaratory clauses of the decision and the identity of the court, which rendered the same, together with the date, on which it became enforceable.

(5) If the court authorizes the shareholders to convene the general meeting, the company shall bear the legal expenses and the expenses of the general meeting. The members of the board of directors shall be liable jointly and severally for the refund of the legal expenses and the expenses of the general meeting. The company may claim from the members of the board of directors to be indemnified against the losses suffered as a result of payment of the legal expenses thereby.

(6) The request of the shareholders under subsection 1 above shall only be accommodated on condition that the shareholders submit evidence showing that they have been holding the shares for at least three months prior to the expiration of the term for the convocation of the extraordinary general meeting by the board of directors pursuant to subsection 2 above.

#### **Section 182**

(1) Upon request of shareholders referred to in Section 181 subsection 1 above:

- a) the board of directors shall include in the agenda of the general meeting matters proposed by such shareholders; the general meeting shall be obliged to address such matters,
- b) in case the request to include a certain issue in the agenda is received only after the invitations to the general meeting shall have been sent or following the publishing of the notice of the general meeting, the board of directors shall send and publish a supplement to the agenda of the general meeting in the manner prescribed by the law and by the articles of association for the convocation of the general meeting, at least ten days prior to the date of the general meeting. If it is impossible to supplement the agenda as provided above, the issue in question may be included in the agenda of the general meeting only pursuant to Section 185 subsection 2 below,
- c) the supervisory board shall review the performance of the board of directors' authority concerning specific matters,
- d) the board of directors shall make, on behalf of the company, the claims to the payment of the issue price of shares against shareholders, who are in default, or the claims of the company to the refund of any payment made to the shareholders in contrast with this Act,
- e) the supervisory board shall make, on behalf of the company, the claims to indemnities or, as appropriate, any other claims, which the company might have against the members of the board of directors,
- f) the supervisory board shall make, on behalf of the company, the claims to the payment of the issue price of shares in case the company subscribed, in contrast with this Act, any shares making up its registered capital (Section 161 above),
- g) the supervisory board shall make, on behalf of the company, the claims, which the company might have against the members of the board of directors having status of guarantors pursuant to this Act.

(2) If the board of directors or the supervisory board fail to proceed as requested by the shareholders without undue delay, the shareholders referred to in Section 181 subsection 1 above shall be allowed to make claims under subsection 1 above on behalf of the company. No party (other than the shareholder, who filed the respective action or his agents) shall be allowed to take any action on behalf of the company within the framework of the legal proceedings.

(3) The shareholders, which make claims referred to in subsection 2 above on behalf of the company, shall bear the legal expenses. If the company is adjudicated a refund of legal expenses, the obligor shall refund the same directly to the shareholder, which made the claims above on behalf of the company.

#### **Section 183**

The provisions of Section 131 above concerning the declaration of invalidity of resolutions passed by the general meeting shall apply *per analogiam*. Any shareholder, which attended the general meeting, may claim the right referred to in Section 131 subsection 1 above only if its protest is contained in the minutes from the general meeting.

#### **Section 183a**

Shareholders shall be allowed to view, in the registered office of the company, any of the documents, which are to be filed with the Collection of Deeds pursuant to a special act. Shareholders may request copies of such documents, or they may request the company to send such documents to the addresses designated thereby, at their own risk and expense.

### **4**

## **JOINT-STOCK COMPANY BODIES**

### **GENERAL MEETING**

#### **Section 184**

(1) The supreme body of the company shall be its general meeting. The shareholders attend the general meeting either personally or through a proxy authorized in writing (hereinafter referred to only as “attending shareholders”). If a shareholder authorizes several proxies to exercise the voting rights attached to the same shares at the same general meeting, the company shall only accept the votes of the proxy, who has been registered in the attendance list as first. No member of the supervisory board may be appointed as proxy of any shareholder.

(2) General meetings shall be held at least once a year, by the date specified in the articles of association, and shall be convened by the board of directors, in the manner and within the periods specified in the articles of association. In case the law requires a general meeting to be convened and the board of directors fails to decide to convene the same within undue delay or is not able to pass resolutions for an extensive time period, either of the directors shall be allowed to convene the general meeting.

(3) If any registered shares are outstanding, the board of directors shall send invitations to all the shareholders to the addresses of their registered offices or residences appearing in the register of shareholders not less than 30 days prior to the date of the general meeting. If any bearer shares are outstanding, a notice of the general meeting shall be published by the term above in periodic press with nation-wide coverage providing stock exchange information, unless the articles of association indicate a specific periodic paper with nation-wide coverage. The articles of association may specify other method of publication. Provided that the shareholder established, as a security covering the respective expenses, a pledge over at least one share of the company, the company shall send to such a shareholder holding bearer shares a registered letter with a notice of the general meeting by the date above, to the address specified thereby and at the expense of the shareholder. Public joint stock company shall be obliged to publish a notice of

general meeting in periodic press with nation-wide coverage providing stock exchange information.

(4) The invitation to and the notice of the general meeting shall include at least the following essentials:

- a) the business name and the registered office of the company, the place, the date and the hour of the general meeting,
- b) information as to whether an ordinary or an extraordinary general meeting is to be convened,
- c) the agenda of the general meeting,
- d) the date relevant for the exercise of the right to attend the general meeting in case any book-entry shares are outstanding.

(5) Unless the articles of association provide otherwise, the general meeting shall be held in the place, in which the company has its registered office. The place, date and hour of the general meeting must be set so as to minimize any possible obstacles preventing the shareholders to attend the general meeting.

(6) If the agenda of the general meeting includes any amendment to the articles of association, the invitation to or the notice of the general meeting must specify at least the nature of the proposed amendments. The draft amendments to the articles of association and, if the general meeting is supposed to appoint members of the company bodies, also the names of the candidates to be appointed as members of the individual bodies of the company, must be available to the shareholders in the registered office of the company by the term for the convocation of the general meeting.

(7) Any shareholder may ask for copies of the draft articles of association and the list of candidates to be appointed as members of the individual bodies of the company, together with the office to be appointed to, or it may ask that such copies are sent to the address determined thereby at its own expense and risk. The shareholders must be advised of their rights referred to in subsection 6 above in the invitation to or the notice of the general meeting.

(8) The articles of association may provide for other method of disclosure of proposals to the shareholders by the board of directors prior to the date of the general meeting. The articles of association may provide that the board of directors or, as appropriate, the supervisory board, are obliged to disclose to the shareholders also further proposals of resolutions, which shall be submitted thereby to the general meeting, in the manner specified in the articles of association. If the proposals submitted by the board of directors or by the supervisory board, as appropriate, diverge from the proposals disclosed to the shareholders prior to the date of the general meeting, or if prior to the general meeting the board of directors or the supervisory board, as appropriate, fail to disclose such proposals, this shall not be a reason to declare null and void the resolutions of the general meeting concerned, provided that the board of directors or the supervisory board, as appropriate, provide a justification thereof at the general meeting.

#### **Section 185**

(1) The attending shareholders shall be recorded into the list of attendance containing the designation and the registered office of the shareholder (if it is a legal entity) or the name and residence of the shareholder (if he is an individual), the identity of the proxy, if any, the serial number of paper shares and the nominal value of shares giving voting rights, or, as appropriate, a note that no voting rights are attached to the shares. The accuracy of the attendance list shall be confirmed by the signatures of the chairman of the general meeting and the minutes clerk, who

were appointed in compliance with the articles of association. If the company refuses to record a party into the attendance list, a note thereof shall be made in the attendance list, together with a justification. The attendance list shall be attached to the minutes from the general meeting.

(2) Issues, which have not been included in the proposed agenda of the general meeting, may be decided only subject to attendance of the general meeting and approval of such issues by all the shareholders.

#### **Section 186**

(1) The general meeting shall take decisions by a simple majority of votes of the attending shareholders, unless this Act or the articles of association require another majority.

(2) Any decision of the general meeting to amend the rights attached to a certain class of shares or to restrict the transferability of registered shares requires also the approval of a two-thirds majority of holders of such shares. The articles of association may determine that a higher majority of votes of shareholders holding such shares shall be required to pass resolutions by the general meeting.

(3) If the shareholders are not able to exercise voting rights attached to any shares, such shares shall be disregarded at the voting by the general meeting.

#### **Section 186a**

(1) Any agreement by which a shareholder commits itself towards the company or any of its bodies or their members:

- a) to proceed as instructed by the company or any of its bodies upon voting,
- b) to vote in favor of proposals submitted by the bodies of the company, or
- c) to exercise its voting rights in a certain manner or to abstain from the voting as a consideration for the benefits granted by the company.

shall be null and void

(2) Any provisions of the articles of association obliging the shareholders to proceed as provided in subsection 1 above shall be null and void.

#### **Section 187**

(1) The scope of powers of the general meeting shall include the following:

- a) to amend the articles of association,
- b) to decide on the increase or the reduction of the registered capital or on the authorization of the board of directors to increase the registered capital as provided in Section 210, and on the issuance of bonds,
- c) to appoint and remove members of the board of directors, unless the articles of association provide that such members shall be appointed and removed by the supervisory board (Section 194 subsection 1 below),
- d) to appoint and remove members of the supervisory board and other company bodies as stipulated in the articles of association, other than supervisory board members elected and removed pursuant to the provisions of Section 200 below,
- e) to approve ordinary individual financial statements and extraordinary individual financial statements, to decide on the distribution of profits or coverage of losses and determination of royalties,
- f) to decide to replace shares issued as paper securities by shares issued as book-entry securities and vice versa,

- g) to take decisions concerning the winding-up of the company and change of its corporate form,
- h) to decide to discontinue the trading of the shares at a stock exchange or to decide that the company ceases to be a public joint stock company,
- i) to approve the rules for the remuneration of members of the company bodies, unless the articles of association determine that such rules are to be approved by the supervisory board,
- j) decisions concerning approval of any agreement concerning sale of the enterprise, in full or in part,
- k) to take decisions concerning other matters, which the law or the articles of association entrust to the authority of the general meeting.

(2) Decisions of the general meeting concerning amendments to the articles of association, increase or reduction of the registered capital, authorization of the board of directors to increase the registered capital pursuant to Section 210 below, issuance of priority or convertible bonds, winding-up of the company or change of its corporate form, shall require a two-thirds majority of votes of the attending shareholders, while such decisions must be recorded in a notarial deed. The two-thirds majority of votes of the attending shareholders shall also be required for a decision of the general meeting to discontinue the trading of the shares at a stock exchange if the shares of the company are listed on the primary market. The articles of association may determine that the resolutions of the general meeting require a majority of votes higher than above.

#### **Section 188**

(1) The general meeting shall elect a chairman, a secretary, two persons to verify the minutes (minutes verifiers) and persons to count the votes cast (vote tellers). Prior to the election of the chairman of the general meeting, the board of directors shall authorize a director or another party to chair the general meeting, unless the law provides otherwise. If such a party does not attend the general meeting, the general meeting may be chaired by any of the shareholders until the time of election of the chairman.

(2) The minutes from the general meeting shall include:

- a) the business name and the registered office of the company,
- b) the place, the date and the hour of the general meeting,
- c) the names of the following: the chairman of the general meeting, the secretary, the verifiers and the vote tellers,
- d) description of the proceedings concerning the individual items on the agenda of the meeting,
- e) decisions taken by the general meeting and the votes cast,
- f) protests lodged by shareholders, members of the board of directors or the supervisory board against the decisions taken by the general meeting, when so requested by the party making the protest.

(3) The proposals and the statements submitted for the discussion of the general meeting shall be attached to the minutes from the general meeting.

#### **Section 189**

(1) The board of directors shall execute minutes from each general meeting within 30 days of the date thereof. The minutes shall be signed by the secretary, the chairman of the general meeting,

and two elected verifiers.

(2) Any shareholder may ask the board of directors for a copy of the minutes of the general meeting or its part, together with the annexes thereto. If a shareholder makes such a request, the board of directors shall be obliged to send, without undue delay, the copy above to the address specified by the shareholder or make the copy available thereto in another manner agreed with the shareholder; otherwise it shall make the copy available in the place of the registered office of the company. Unless the articles of association provide otherwise, the expenses incurred in the preparation and sending of the copy of minutes from the general meeting or its part, together with annexes thereto, shall be borne by the requesting shareholder. The articles of association may provide other terms, at which the company shall be obliged to make available to its shareholders a copy of the minutes or its part, together with the annexes thereto.

(3) Minutes of general meetings, together with notices of and invitations to general meetings, and attendance lists shall be filed in the files of the company for its entire existence. If the company ceases to exist without any successor-in-law, such documents shall be surrendered to the appropriate Public Filing Office.

#### **Section 190**

(1) If there is only one shareholder holding shares on the company, the powers of the general meeting shall be vested in such sole shareholder. The provisions of Section 187 subsection 2 and Sections 188 and 189 above shall apply, *mutatis mutandis*, to the recording of the decision taken at the exercise of the powers of the general meeting. The decision of the sole shareholder, in which the powers of the general meeting are vested, must be made in writing and must be undersigned by the shareholder. A notarial deed shall be required in cases set forth in Section 187 subsection 2 above, while the provisions of Section 189 subsection 3 above shall apply *mutatis mutandis*. The provision of Section 184 subsection 3 above shall not apply.

(2) The sole shareholder may request that when taking decisions referred to in subsection 1 above, the board of directors and the supervisory board be present. The written decision of the sole shareholder referred to in subsection 1 above must be delivered both to the board of directors and the supervisory board.

(3) Any agreements made between the company and its sole shareholder must be made in writing in case the shareholder acts on its behalf and also on behalf of the company.

### **BOARD OF DIRECTORS**

#### **Section 191**

(1) The board of directors shall be the statutory body of the company, which shall manage its operations and act on its behalf. The board of directors shall take decisions concerning any matter of the company, unless such matters are reserved to the authority of the general meeting or to the supervisory board by this Act or the articles of association. Unless the articles of associations provide otherwise, any member of the board of directors shall be authorized to act on behalf of the company. The names of the members of the board of directors authorized to undertake binding obligations on behalf of the company and the manner in which they act on behalf of the company shall be recorded in the Companies Register.

(2) The authority of the board of directors to act on behalf of the company may be restricted by the articles of association, resolutions of the general meeting or by the supervisory board. However such restriction shall be of no effect vis-a-vis third parties.

#### **Section 192**

(1) The board of directors shall provide for due keeping of the company's accounting records and submit to the general meeting, for their approval, ordinary individual financial statements, extraordinary individual financial statements, as well as a proposal for the distribution of profit or the coverage of losses, in accordance with the articles of association. Such financial statements shall be sent to the shareholders holding registered shares at least 30 days prior to the date of the general meeting. If any bearer shares are outstanding, the main figures from such financial statements shall be published, by the term above and in the manner prescribed by the law and by the articles of association for the convocation of the general meeting. In addition to the above, the financial statements must be available for the shareholders in the registered office of the company by the term prescribed by the law and by the articles of association for the convocation of the general meeting. A shareholder holding bearer shares, who has established a pledge over its shares in favor of the company as provided in Section 184 subsection 3 above, may request that the copies of the financial statements be sent to the address specified thereby, at its own risk and expense. The shareholders shall be advised of their rights above in the invitation to or the notice of the general meeting. The articles of association may provide other manner, in which the company shall disclose its financial statements to the shareholders.

(2) Attached to ordinary individual financial statements or extraordinary financial statements, the board of directors shall submit to the general meeting for its review also an annual report prepared pursuant to special legislation. At intervals prescribed by the articles of association, however at least once a year, the board of directors shall submit to the general meeting a report on the business of the company and its property, which report shall constitute an integral part of the annual report.

#### **Section 193**

(1) The board of directors shall submit to the supervisory board, at least once a year, a written report specifying the fundamental strategy of the management of the company for the coming period, and the expected development of the property, finance and revenues of the company. Upon request of and by the term determined by the supervisory board, it shall also submit a written report on the business and the property of the company, and a reconciliation thereof with the prognosis. In addition to the above, the board of directors shall promptly inform the supervisory board of any fact, which might have a material impact on the business and the property of the company, including but not limited to its liquidity. The directors shall be obliged to attend, upon request of the supervisory board or any of its members, the meetings of the supervisory board and to disclose to its members additional information concerning the reports above to the extent required by the supervisory board.

(2) The board of directors shall convene an extraordinary general meeting after it shall have found out that the accumulated loss of the company exceeded or may exceed one third its registered capital and shall submit to the general meeting a proposal of steps to be taken. The board of directors shall notify the supervisory board accordingly without delay.

#### **Section 194**

(1) Members of the board of directors shall be appointed by the general meeting from among the shareholders or other persons for the term specified in the articles of association, however not more than 5 years. The articles of association may provide that the directors shall be appointed



and removed by the supervisory board in the manner specified therein.

(2) The body, which appoints the directors, shall determine, which one of the directors shall be the chairman of the board of directors. If the directors are appointed by the supervisory board, the first members of the supervisory board shall appoint first directors prior to filing a request of registration of the company into the Companies Register. The provisions of Section 194 subsection 1 above shall apply, *mutatis mutandis*, to the decisions-making of the first members of the supervisory board. Only individuals may be appointed to the office of director.

(3) The articles of association may provide that the general meeting shall appoint the directors as specified in Section 200 subsection 2 below.

(4) The articles of association may provide that the board of directors may co-opt substitute directors until the next meeting of the respective body of the company, provided that the number of directors originally appointed by the respective body has not dropped below one half.

(5) The directors shall discharge their offices with due care, which involves a duty to exercise professional care and act in line with the interests of the company and all of its shareholders. In particular, the directors shall collect and at their decision making take into account any available information concerning such a decision, shall not disclose any confidential information and facts, the disclosure of which to third parties could cause damage to the company or prejudice its interests or the interests of its shareholders, and shall not, at discharging their duties, prefer their own interests or interests of certain shareholders only or interests of third parties to the interests of the company.

(6) The directors, who are in breach of their duties, shall be liable jointly and severally to indemnify the company against the damage, which was caused thereto. In particular they shall indemnify the company against any damage due to the following:

- a) payments made to shareholders in contrast with this Act,
- b) acquisition of property by the directors in contrast with the provisions of Section 59a above,
- c) payments made in contrast with the provisions of Section 196a below,
- d) subscription by the company, acquisition or acceptance as pledge, of its own shares or shares of another company in contrast with this Act,
- e) issuance, by the company, of shares in contrast with this Act.

(7) The director shall not be liable for the damage after he shall have submitted evidence showing to have discharged his duties with due care and to have acted in good faith for the benefit of the company. The directors shall not be liable for any damage caused to the company at the implementation of a resolution of the general meeting. The above shall not apply if the resolution of the general meeting is contrary to the law or the articles of association. The directors shall not be discharged of their liability if their conduct has been approved by the supervisory board.

(8) Any agreements between the company and the director, which exclude or restrict the scope of liability of the director, shall be forbidden. The liability of the director can not be restricted or excluded by the articles of association. The company may waive its claims to indemnity against the directors or make a settlement therewith, but not earlier than three years after the occurrence thereof, and only if the waiver is approved by the general meeting and if no objection against such a resolution is raised at the general meeting and included in the minutes by any minority shareholders holding shares with the aggregate nominal value of not less than 5% of the registered capital.

(9) The claims of the company against the directors to indemnities may be made by a creditor of the company in its own name and for its own account in case it is not able to satisfy its debt out

of the property of the company. The provisions of subsections 6 through 8 above shall apply *mutatis mutandis*. The claims of the creditors of the company towards the director shall not be extinguished even if the company waives its claims to indemnities or enters into a settlement agreement with the directors. If a bankruptcy order is made against the property of the company, the claims of the creditors shall be enforced towards the directors by the trustee in bankruptcy.

#### **Section 195**

(1) Minutes shall be executed from meetings of the board of directors, shall include any resolutions passed thereby, and shall be undersigned by the chairman of the board of directors and the secretary.

(2) Each member of the board of directors shall be entitled to demand that his opinion in contrast with the opinions of the other directors with respect to the discussed matter be recorded in the minutes.

#### **Section 196**

##### **BAN ON COMPETITIVE CONDUCT**

(1) Unless the articles of association provide further restrictions, no member of the board of director shall be allowed:

- a) to enter in his own name, or for his own account, into business deals inherent to the company's business activities,
- b) to facilitate the deals of the company for other parties,
- c) to participate in the business of any partnership as a member with unlimited liability, or,
- d) to discharge the office statutory body or be a member of a statutory or similar body of another legal entity having a similar scope of business, unless the company, of whose statutory body he is a member, has any interest in the other company's business.

(2) Any breach of the provisions above shall have implications referred to in Section 65 above.

#### **Section 196a**

(1) The company may extend a loan or a borrowing, transfer or make available for its use the property of the company or secure a liability of any director, procurator or another party authorized to act on behalf of the company and their close persons or persons acting for their account, only subject to a prior approval of the supervisory board and only on an arm's length basis.

(2) If the parties referred to in subsection 1 above are authorized to act also on behalf of other parties, the provisions of subsection 1 above shall apply, *mutatis mutandis*, also to any payments made or services provided under subsection 1 above to such other parties. No approval of the supervisory board shall be requested in case a payment is made or a service is provided by a controlling party to its controlled party.

#### **SUPERVISORY BOARD**

##### **Section 197**

(1) The supervisory board shall supervise the exercise of powers by the board of directors and the conduct of business by the company.

(2) Members of the supervisory board shall be entitled to view any document and report concerning the dealings of the company. Also the supervisory board shall be entitled to inspect,

whether the books are properly kept and provide a true and fair view and whether the business of the company is in compliance with the law, the articles of association and the instructions of the general meeting.

#### **Section 198**

The supervisory board shall review the ordinary, extraordinary and consolidated financial statements, as well as the proposal for the distribution of profits and coverage of losses, and shall submit its comments to the general meeting.

#### **Section 199**

(1) The supervisory board shall convene a general meeting whenever the interests of the company so require, and shall propose any necessary measures at the general meeting. The provisions of Section 184 above shall apply to the procedure of convocation of the general meeting, *mutatis mutandis*.

(2) The supervisory board shall designate a member, who shall represent the company in legal proceedings and similar proceedings against members of the board of directors.

#### **Section 200**

(1) The supervisory board shall consist of no less than 3 members. Two-thirds of the supervisory board members shall be appointed and removed by the general meeting and one third by the staff of the company, provided that there are more than 50 full-time employees at the time of election. The articles of association may provide a higher number of members of the supervisory board to be elected by the company staff, however, this number may not be higher than the number of members to be appointed by the general meeting. The articles of association may also provide that even if the number of the staff employed with the company is less than above, the employees shall elect a member (several members) of the supervisory board.

(2) Members of the supervisory board shall be appointed for the term specified in the articles of association, however not more than 5 years. At the appointment of the members of the supervisory board, the voting concerning the candidates to be appointed as members of the supervisory board shall be first made en bloc. A list of candidates shall be drawn out of all the proposals of candidates for members of the supervisory board. The shareholders shall appoint the members of the supervisory board by specifying the number of votes, out of their aggregate votes, which they cast in favor of the individual candidates, while the maximum number of candidates, to whom they may give their votes, shall be equal to the number of members of the supervisory board to be appointed at the general meeting. Those candidates shall become members of the supervisory board, who have been given most votes. The provisions of Section 186 subsection 1 above shall not apply. The articles of association may provide for appointment of the members of the supervisory board otherwise than above.

(3) The provisions of Section 194 subsections 4 through 8 and Sections 196 and 196a above shall apply also to the members of the supervisory board *per analogiam*.

(4) Only an individual may be appointed as member of the supervisory board. A member of the supervisory board may not hold the office of member of the board of directors, procurator, or be a person authorized to act on behalf of the company as per the registration in the Companies Register.

(5) The elections of the members of the supervisory board to be appointed by the company staff shall be organized by the board of directors in collaboration with the trade unions. If there are no

trade unions in the company, the elections shall be organized by the board of directors in collaboration with the staff members, who are authorized to appoint the members of the supervisory board (hereinafter referred to only as "authorized electors"). The proposal of appointment or removal of the members of the supervisory board appointed by the company staff may be filed with the board of directors by the trade unions or jointly by at least 10% of the authorized electors. The appointment or removal of such members of the supervisory board shall only be valid if the decision of the company staff is approved by at least one half of the authorized electors or their agents.

(6) The rules of appointment and removal of members of the supervisory board to be appointed by the company staff shall be prepared and approved by the trade unions. If there are no trade unions in the company, such rules shall be prepared and approved by the board of directors in collaboration with the authorized electors.

#### **Section 201**

(1) Members of the supervisory board shall attend general meetings of the company and shall be obliged to report to the general meeting the findings of their monitoring and inspections.

(2) In case the opinion of the employees' representatives of the supervisory board or the opinion of the minority members of the supervisory board, if requested thereby, differs from the rest of the supervisory board, this opinion shall be disclosed to the general meeting together with the conclusions drawn by the other members of the supervisory board.

(3) The supervisory board shall take decisions by the majority of votes of its members determined in the articles of association. If the articles of association do not specify the majority, decisions shall be taken by a simple majority of members of the supervisory board. Minutes from the meetings of the supervisory board shall be drawn and undersigned by its chairman. The minutes shall also include the opinions of the minority, if it so requires. The opinions of the members of the supervisory board appointed by the company staff shall always be included in the minutes, if different from the rest.

### **5**

## **INCREASE OF THE REGISTERED CAPITAL**

#### **Section 202**

(1) The decision to increase the registered capital shall be taken by a two-thirds majority of votes of all the shareholders attending the general meeting. If several classes of shares are outstanding, a two-thirds majority of votes of the attending shareholders shall be required with respect to each class of shares. The resolution of the general meeting to increase the registered capital shall be filed into the Collection of Deeds. The resolution of the general meeting may be filed into the Collection of Deeds not later than the date of filing of the request of registration of the increased registered capital in the Companies Register.

(2) An invitation to, or a notice of the general meeting shall include, in addition to the essentials pursuant to Section 184 subsection 4 above, also the following:

- a) the reasons of the proposed increase of the registered capital,
- b) the method of increasing the registered capital and the amount by which the registered capital should be increased,
- c) the proposed number, nominal value, shape, form and class of shares if new shares are to be issued, or the new nominal value of the previously issued shares,

- d) the proposed issue price or the method of determination thereof, if the registered capital is to be increased through a subscription of new shares,
- e) reasons for restricting or excluding the right referred to in Section 204a below, if this is proposed,
- f) if the issue of a new class of shares is proposed, the rights attached thereto and also any impact of such a new issue on the rights attached to the previously issued shares.

If the invitation to or the notice of the general meeting includes a proposed resolution of the general meeting to increase the registered capital, the essentials referred to in letters b), c), d) and f) need not be specified separately.

(3) If the increase of the registered capital involves a contribution in kind, its description and the value, which shall be set-off against the issue price of the shares, shall be specified in the invitation or the notice. The general meeting shall be submitted an official appraisal showing that the value of the contribution in kind corresponds to the issue price of the shares to be paid up by such a contribution.

(4) The increase of the registered capital shall be effective as of the day of its entry in the Companies Register, unless the law provides otherwise.

## **INCREASE OF THE REGISTERED CAPITAL BY SUBSCRIPTION OF NEW SHARES**

### **Section 203**

(1) The increase of the registered capital by the subscription of new shares may only be carried out if the shareholders have paid up in full the issue price of all the previously issued shares, other than shares issued to the company staff. The restriction above shall not apply to an increase of the registered capital through contributions in kind, or if shares are to be issued to the company staff.

(2) The resolution of the general meeting to increase the registered capital by a subscription of shares shall include, but not be limited to:

- a) the amount, by which the registered capital shall be increased,
- b) the number, nominal value, shape, form and class of shares to be subscribed,
- c) rights attached to a new class of shares, if the general meeting decides to issue a new class of shares,
- d) the issue price of the shares to be subscribed or the method of determination thereof,
- e) the date relevant for the exercise of the right referred to in Section 204a below, if there are any book-entry shares outstanding,
- f) the terms and conditions and the place of exercise of the right referred to in Section 204a below, while the term thereof shall not be shorter than 14 days,
- g) the method of subscription of shares, which are not subscribed through the exercise of the right referred to in Section 204a below, the term and the place for the subscription thereof,
- h) the terms and conditions and the place of subscription of shares, if the general meeting decides to restrict or exclude the right referred to in Section 204a below,
- i) specification of the fraction of the nominal value of the subscribed shares, which must be paid up by subscribers undertaking to make contributions in cash pursuant to Section 204 subsection 2 below, and the term for the payment thereof,
- j) approval of the property to be contributed as a contribution in kind and of its value in money terms (which shall be set-off against the issue price of the subscribed shares) in case the registered capital is to be increased by contributions in kind.

(3) In case the value of the subscribed shares is lower than the proposed registered capital on the last day of the term set by the general meeting for the subscription of the shares, it shall be admissible to increase the registered capital by the shares so subscribed only if this is approved by the general meeting and only if such an alternative is expressly specified in the public call for the subscription of shares.

(4) Following the subscription of the proposed registered capital, the board of directors shall refuse any further subscriptions, unless the general meeting decides otherwise. If the resolution of the general meeting to increase the registered capital admits subscription of shares in excess of the proposed registered capital, the provisions of Section 163 subsection 2b) and Section 166 subsection 2 above shall apply *mutatis mutandis*, while such an alternative must be expressly specified in the public call for the subscription of shares.

(5) If the registered capital is to be increased under a public call for the subscription of shares, the board of directors shall make public the call for the subscription of shares in an appropriate manner. The public call for the subscription of shares must contain the details of the resolution of the general meeting to increase the registered capital referred to in subsection 2 above, or, as appropriate, details under subsections 3 and 4 above.

### **Section 204**

(1) Unless the law provides otherwise, the provisions concerning the subscription of shares and payment of their issue price upon establishment of the company shall apply also to the subscription of shares and payment of their issue price upon any increase of its registered capital. It shall not be admissible to subscribe shares against contributions in kind under a public call for the subscription of shares.

(2) If the subscriber undertakes to make a contribution in cash, it shall pay up a percentage of the nominal value of shares subscribed thereby by the date and for the amount specified in the resolution of the general meeting, which in no case shall be lower than 30% of the nominal value of shares. The payment shall be made to a bank account notified to the subscribers by the board of directors. As regards companies, the shares of which were accepted by a stock exchange for their trading as listed securities on the primary market, the entire issue price of the shares must be paid up by the date above.

(3) The subscriber may undertake to make only such contributions in kind, the nature and the value of which in money terms (which shall be set-off against the issue price of the subscribed shares) were approved by the general meeting. The contribution in kind shall be set-off against the issue price of the subscribed shares for the amount determined by the general meeting.

(4) The resolution of the general meeting to increase the registered capital may provide that the company staff may subscribe a certain number of shares at a price lower than the issue price of the shares, provided that the difference is financed out of the equity of the company. The terms of subscription of and payment for the shares by the company staff shall be specified in the resolution of the general meeting to increase the registered capital.

### **Section 204a**

(1) If the company increases its registered capital against contributions in cash, its current shareholders shall have preemption rights to the subscription of new shares, in proportion between the nominal value of shares held thereby and the registered capital prior to its increase.

(2) The board of directors shall publish the call to exercise the preemption rights to the subscription of shares. If all the outstanding shares are registered shares, instead of publishing

the call, the board of directors shall send the same to all the shareholders. The call must contain essentials from the resolution of the general meeting to increase the registered capital referred to in Section 203 subsection 2 above, including but not limited to the terms, place and the date, by which the preemption rights to the subscription of shares may be exercised.

(3) The date relevant for the identification of the party, to the benefit of which the preemption right to the subscription of shares shall inure, shall be determined by the general meeting in its resolution to increase the registered capital, while it shall not be earlier than 5<sup>th</sup> day following the date of the general meeting and not later than the first day of the term set for the exercise of the preemption right to the subscription of shares.

(4) The preemption right to the subscription of shares referred to in subsection 1 above may be transferred separately since the date of the decision of the general meeting to increase the registered capital.

(5) The preemption right to the subscription of shares can not be restricted or excluded in the articles of association. Such a right may only be restricted or excluded by the resolution of the general meeting to increase the registered capital if serious interests of the company so require. If a proposal is made to restrict or exclude the preemption right to the subscription of shares, the board of directors must submit to the general meeting a written report justifying the restriction or exclusion of the preemption right to the subscription of shares and the proposed issue price of the shares. In between the date of convocation of the general meeting, which is supposed to take the decision concerning the restriction or exclusion, and the actual date of the general meeting, the board of directors shall make available to the shareholders the written report above promptly upon their request, otherwise prior to the opening of the general meeting. The provisions of Section 184 subsections 6 through 8 shall apply *mutatis mutandis*.

(6) There shall be no restriction or exclusion of the preemption right to the subscription of shares if the resolution of the general meeting provides that all the shares are to be subscribed by a securities broker under a shares issue facilitation agreement, provided that the agreement contains an undertaking of the securities broker to sell the shares to the holders of preemption rights to the subscription of shares upon their request, at the price and by the dates specified in the resolution of the general meeting, to the extent of their preemption rights to the subscription of shares. The provisions of subsections 1 through 4 above shall apply, *mutatis mutandis*, to the procedure of sale of the shares by the securities broker.

(7) If the purpose of the increase of the registered capital is, according to the resolution of the general meeting, the issue of shares to the company staff, this fact shall amount to a serious interest of the company justifying the restriction or exclusion of the preemption right to the subscription of shares referred to in subsection 5 above.

#### **Section 205**

(1) If all the shareholders agree in writing the distribution of the entire increase of the registered capital among them, such an agreement shall replace the list of subscribers. The provisions of Section 202 above shall hereby not be affected, while the provisions of Sections 203 and 204 above shall apply *mutatis mutandis*.

(2) The agreement of the shareholders under subsection 1 above must specify the number, class, form, shape and nominal value of shares subscribed by each shareholder, the issue price and the date, by which it must be paid up. If the registered capital is to be increased by contributions in kind, the agreement must also contain a description of such contributions and their value in money terms (which shall be set-off against the issue price of the subscribed shares).

#### **Section 206**

(1) The board of directors may file a request of registration of the increased registered capital into the Companies Register after the respective shares shall have been subscribed and not less than 30% of the nominal value of contributions in cash shall have been paid up.

(2) If the board of directors specifies, in its statement confirming full or partial payment of the contributions by the individual subscribers, an amount higher than the amount actually paid up, the directors shall bear joint and several liability towards the company, up to such a difference, for the fulfillment of the liability of the shareholder to pay up to contribution, and shall be jointly and severally liable towards the creditors of the company for the liabilities of the company up to the amount above. The liability of the directors towards the creditors of the company shall be discharged upon payment of the contributions, which were affected by the misstatement.

(3) If the board of directors fails to file a request of registration of the increased registered capital into the Companies Register within 90 days from the date of subscription, the subscription of the shares shall not be effective, the rights and the duties of the subscribers arising out of the subscription shall be extinguished and the company shall be obliged to refund to the subscribers their contributions or fractions thereof, which were paid up upon subscription. If there are any contributions in cash, the company shall refund the same together with interest accruing thereon, at the rate normally charged by banks in the registered office of the company under current account agreements in force as of the date on which the liability above arose.

### **CONDITIONAL INCREASE OF THE REGISTERED CAPITAL**

#### **Section 207**

(1) If the general meeting decides to issue convertible or priority bonds, at the same time the general meeting shall decide an increase of the registered capital, which shall be carried out to the extent of exercise of the rights to the issue of shares of the company attached to the convertible bonds or the rights to subscribe shares attached to the priority bonds (hereinafter referred to only as “conditional increase of the registered capital”).

(2) The amount of the conditional increase of the registered capital shall not exceed one half of the registered capital of the company at the time of the resolution of the general meeting authorizing the conditional increase of the registered capital.

(3) The resolution of the general meeting authorizing the conditional increase of the registered capital shall specify:

- a) reasons leading to the conditional increase of the registered capital and the amount thereof,
- b) a note, whether the conditional increase of the registered capital was made to fulfill the obligations of the company arising out of convertible or priority bonds,
- c) maximum extent of the conditional increase of the registered capital and the nominal value, form, class and shape of shares, which shall be issued by the company as part of the increase of the registered capital,
- d) if the general meeting decides to issue a new class of shares, a description of the rights attached thereto,
- e) place and terms of exercise of the rights to the issue of shares of the company attached to the convertible bonds or the rights to subscribe shares attached to the priority bonds,
- f) number, nominal value, form, shape and class of shares, which may be exchanged against one convertible bond or subscribed against one priority bond,

- g) determination of the exchange rate between the convertible bond and the shares. The nominal value of shares, which may be exchanged against the convertible bond shall not be higher than the issue price of the bond,
  - h) determination of the issue price of shares to be subscribed upon the exercise of the right to subscribe shares attached to the priority bonds, or a method of determination thereof, and a determination of the fraction of the issue price of the subscribed shares, which must be paid up by the subscriber pursuant to Section 204 subsection 2 above, together with the date, by which it must be paid up.
- (4) Any resolution of the general meeting, which is in contrast with a previously approved resolution of the general meeting concerning the conditional increase of the registered capital, shall be void.
- (5) The decision concerning the conditional increase of the registered capital and the amount of the conditional increase of the registered capital shall be registered in the Companies Register. The provisions of Section 202 subsection 1 above shall hereby not be affected. Prior to the registration of the decision concerning conditional increase of the registered capital into the Companies Register, the company shall not be allowed to issue shares against convertible bonds or to commence the subscription of shares against priority bonds.
- (6) Unless the resolution of the general meeting provides for other terms of exercise of rights attached to convertible bonds, such rights shall be exercised by a delivery of a written request of exchange of the bonds against the shares of the company. The delivery of the request of exchange of the bonds against the shares of the company shall replace the subscription of and payment for the shares. The rights to priority subscription of shares attached to the priority bonds shall be exercised by subscription of the shares of the company. The provisions of Section 204 above shall apply to such a subscription, while no shares shall be subscribed against a contribution in kind.
- (7) The rights to have the convertible bond exchanged against the shares of the company may only be exercised following the payment in full of the issue price of the bonds, to which such rights are attached. Upon exercise of the right to the exchange of the convertible bond against the shares of the company, the registered capital of the company shall be increased and the holder of the convertible bonds shall acquire the status of shareholder.
- (8) Upon exercise of the right to priority subscription of shares attached to the priority bonds and upon the payment of the issue price of the subscribed shares (or its fraction), which is payable by the subscriber, who undertook to make a contribution in cash pursuant to subsection 3h) above, the registered capital of the company shall be increased and the holder of the priority bonds shall acquire the status of shareholder.
- (9) Prior to the effective date of the increase of the registered capital made pursuant to subsections 7 and 8, the company shall not be allowed to issue any shares to the holders of convertible or priority bonds. The board of directors shall, not later than one month from the last day of the calendar year, file a request of registration of the increased registered capital into the Companies Register to the extent, in which the registered capital was increased in the course of the previous calendar year pursuant to subsections 7 and 8 above.

## **INCREASE OF THE REGISTERED CAPITAL OUT OF THE COMPANY'S EQUITY**

### **Section 208**

- (1) The general meeting may decide to increase the company's registered capital out if its

retained earnings or out of any funds of the company established out of retained earnings, the use of which is not restricted by the law, or out of other equity items of the company disclosed in the individual financial statements, subject to the satisfaction of the conditions under Section 179 subsections 3 and 4 above.

(2) The registered capital may be increased as provided in subsection 1 above only with reference to the approved ordinary financial statements, with respect to which an unqualified opinion of the auditor has been issued, and which were prepared as of the date, which is not more remote than six months from the date of the general meeting.

(3) The resolution of the general meeting to increase the registered capital out of the equity of the company shall specify:

- a) the amount, by which the registered capital shall be increased,
- b) a description of the equity fund of the company, which shall be used to increase the registered capital,
- c) a note, whether the nominal value of the outstanding shares shall be increased and the amount, by which it is to be increased, or whether new shares shall be issued, together with the number and the nominal value of the new shares,
- d) the term, by which the shares are to be exchanged or by which the higher nominal value is to be earmarked on the shares (if there are any paper shares outstanding and if the increase of the registered capital is to be carried out by increasing the nominal value of the outstanding shares).

(4) The shareholders shall participate on the increase of the registered capital pro rata to the nominal value of shares subscribed thereby. Also the following shares shall participate on the increase of the registered capital: the own shares, which are held by the company, the shares, which were acquired by a third party in its own name, but for the account of the company, and any shares, which are held by the controlled company.

### **Section 209**

(1) The increase shall be carried out either by issuing new shares and distributing them free of charge among the current shareholders pro rata to their shareholdings, or by increasing the nominal value of the existing shares.

(2) The nominal value of the existing paper shares shall be increased either by their exchange, or by earmarking a higher nominal value on the existing shares, together with the signature(s) of member(s) of the board of directors authorized to act on behalf of the company. The board of directors shall invite the shareholders, in the manner prescribed by the law or by the articles of association for the convocation of the general meeting, to surrender their shares for the purpose of their exchange or earmarking a higher nominal value thereof.

(3) If any shareholder fails to surrender its shares by the date specified in Section 208 subsection 3d) above, the board of directors shall invite the shareholder, in the manner prescribed by the law or by the articles of association for the convocation of the general meeting, to surrender its shares for their exchange or for earmarking a higher nominal value thereon within an additional term determined thereby. The shareholders shall be warned that in case of default their shares shall be declared null and void.

(4) The board of directors shall declare null and void any shares, which are not surrendered by the additional term above notwithstanding the reminder of the company, and shall issue new shares in their stead. The fact that the shares were declared null and void shall be advised by the board of directors to the affected shareholders in the manner prescribed by the law or by the

articles of association for the convocation of the general meeting.

(5) New shares, which were issued in stead of the shares declared null and void, shall be sold by the board of directors to third parties without undue delay. The proceeds from the sale of such shares, after deducting any expenses incurred by the company in connection with the declaration of nullity of the shares and their sale, shall be paid by the company without undue delay to the affected ex-shareholder, or, as appropriate, it shall deposit the proceeds in custody pursuant to a special act.

(6) The increase of the nominal value of book-entry shares shall be made through an entry changing their nominal value in the register of securities established by a special act.

#### **Section 209a**

##### **COMBINED INCREASE OF THE REGISTERED CAPITAL**

(1) If the company increases its registered capital through a subscription of new shares, the general meeting may decide to finance a certain fraction of the issue price of the subscribed shares from the equity of the company reported in the financial statements. The increase of the registered capital by contributions in kind or any restrictions or exclusions of the right of shareholders to preferential subscription of new shares shall be excluded.

(2) The resolution of the general meeting concerning the combined increase of the general meeting shall specify:

- a) the amount, by which the registered capital shall be increased,
- b) the number, nominal value, shape, form and class of shares to be subscribed,
- c) rights attached to a new class of shares, if the general meeting decides to issue a new class of shares,
- d) the issue price of the shares to be subscribed or the method of determination thereof, and the fraction of the issue price, which is not to be paid by the subscribers,
- e) the equity fund of the company to be used to finance the fraction of the issue price, which is not to be paid by the subscribers,
- f) the date relevant for the exercise of the right referred to in Section 204a above, if there are any book-entry shares outstanding,
- g) the terms and conditions and the place of exercise of the right referred to in Section 204a above, while the term thereof shall not be shorter than 14 days,
- h) the method of subscription of shares, which are not subscribed through the exercise of the right referred to in Section 204a above, the term and the place for the subscription thereof, if shares are to be subscribed under a public call for the subscription of shares,
- i) specification of the fraction of the nominal value of the subscribed shares, which must be paid up by the subscriber undertaking to make a contribution in cash pursuant to subsection 3 below, and the term for the payment thereof.

(3) The subscriber shall pay up the nominal value of the shares subscribed thereby by the date and for the amount specified in the resolution of the general meeting, by a transfer to the bank account to be determined by the board of directors.

(4) The board of directors may file the request of registration of the increased registered capital into the Companies Register only following the subscription of all the shares representing the increased registered capital and payment by the subscribers of their nominal value for the amount specified in the resolution of the general meeting.

(5) The following provisions shall apply to the combined increase of the registered capital *mutatis mutandis*: Section 203 subsections 1 and 3, Section 204 subsection 1 and 4, Section 204a

subsections 1 through 4 and subsection 6, Section 205, Section 206 subsections 3 and 4 and Sections 208 subsections 1 and 2 above.

#### **Section 210**

##### **INCREASE OF THE REGISTERED CAPITAL BY THE BOARD OF DIRECTORS**

(1) The articles of association or the general meeting may authorize the board of directors to decide to increase the registered capital up to a certain amount, at the terms set forth by the law and the articles of association (hereinafter referred to only as “authorized registered capital”). The authorization to increase the registered capital shall be in force for a maximum period of five years. The general meeting may renew its authorization, always by not more than five years. The provisions of Section 202 subsection 1 above shall apply, *mutatis mutandis*, to the decisions of the general meeting authorizing the board of directors to increase the registered capital. The decision of the general meeting authorizing the board of directors to increase the registered capital shall be registered in the Companies Register, together with the amount of the authorized registered capital, while the resolution of the general meeting shall be filed into the Collection of Deeds. The board of directors shall not decide to increase the registered capital prior to the registration into the Companies Register of the decision of the general meeting authorizing the board of directors to increase the registered capital.

(2) The authorization under subsection 1 above shall specify the maximum amount, by which the registered capital may be increased, the method of increase of the registered capital, the nominal value, form, class and shape of new shares, which may be issued. If the resolution above admits subscription of shares against contributions in kind, also the body of the company, which shall approve the nature of the contribution in kind and its evaluation through an official appraisal, and its value in money terms (which shall be set-off against the issue price of the shares). To the extent of its authorization the board of directors shall be allowed to increase the registered capital for several times, provided it does not exceed the maximum amount, by which the registered capital may be increased according to the authorization.

(3) The decision of the board of directors to increase the registered capital shall be filed into the Collection of Deeds. The provisions of Sections 203 through 209a above shall apply, *mutatis mutandis*, to the procedure of increase of the registered capital, unless the law provides otherwise.

(4) The subscribers of shares shall pay up the entire issue price by the date specified in the decision of the board of directors, by a transfer to the bank account determined by the board of directors. The provisions of Section 204 subsection 2 above shall not apply, while the provisions of Section 204 subsection 4 above shall hereby not be affected. Upon payment in full of the issue price of all the new shares, which were subscribed, or, in case of increase of the registered capital as provided in Section 204 subsection 4 above, upon payment of the fraction of the issue price of the subscribed shares specified by the decision of the board of directors, the registered capital of the company shall be increased and the subscribers shall acquire the status of shareholders.

(5) Prior to the effective date of the increase of the registered capital set forth in subsection 4 above, the company shall not be allowed to issue shares to the subscribers. The board of directors shall file, not later than one month from the last day of the current calendar year, a request of registration of the increased registered capital into the Companies Register to the extent, in which the registered capital was increased in the course of the previous calendar year pursuant to subsection 4 above.

## REDUCTION OF THE REGISTERED CAPITAL

### Section 211

- (1) Unless a special act provides otherwise, any reduction of the registered capital will be decided, upon proposal of the board of directors, by a two-thirds majority of votes of shareholders attending the general meeting. If several classes of shares are outstanding, a two-thirds majority of votes of shareholders attending the general meeting shall be required with respect to each class of shares.
- (2) The decision of the general meeting to reduce the registered capital pursuant to the subsection 1 above shall specify:
- the reason and the purpose of reduction of the registered capital,
  - the amount by which the registered capital shall be reduced,
  - the procedure for implementing the reduction,
  - the use of the proceeds raised through the reduction of the registered capital,
  - if the proceeds raised from the reduction of the registered capital are to be distributed among the shareholders, the amount to be paid to the individual shareholders, or a note, whether such proceeds are to be used to waive the duty of the shareholders to pay up the outstanding fraction of the issue price of the shares, in case the issue price has not yet been fully paid up,
  - the term, by which the shares are to be surrendered for their exchange against shares with a lower nominal value or for earmarking of a lower nominal value on such shares, or by which shares are to be surrendered, which shall be subsequently withdrawn from circulation, if any paper shares are outstanding.
- (3) The registered capital may not be reduced below the limit set out in Section 162 subsection 3 above, unless this Act provides otherwise.
- (4) The resolution of the general meeting to reduce the registered capital shall be filed into the Collection of Deeds. The resolution of the general meeting may be filed into the Collection of Deeds not later than the date of filing of the request of registration of the reduced registered capital into the Companies Register.
- (5) The reduction of the registered capital may not affect the rights of bondholders (Section 160 above).

### Section 212

The invitation to, or the notice of, the general meeting shall, in addition to the essentials required by Section 184 subsection 4 above, include, but not be limited to:

- the reasons and the purpose of the proposed reduction of the registered capital,
- the amount by which the registered capital should be reduced,
- the proposed terms of reduction of the registered capital,
- the use of proceeds, which shall be raised from the reduction of the registered capital.

If the invitation to or the notice of the general meeting includes a draft of the resolution to be passed by the general meeting with respect to the reduction of the general meeting, the invitation or the notice need not separately specify the details referred to in letters a) through d) above.

### Section 213

- The registered capital shall be reduced either by reducing the nominal value of the shares or by withdrawing a certain number of shares from circulation.
- The nominal value of the paper shares shall be decreased by exchanging the existing shares for new shares with a lower nominal value, or by earmarking the lower nominal value on the existing shares, together with signature(s) of member(s) of the board of directors authorized to act on behalf of the company or of another party pursuant to a special act.
- The reduction of the nominal value of book-entry shares shall be made through an entry changing their nominal value in the register of securities established by a special act.
- Those shares may be withdrawn from circulation, which are specified in an agreement with the shareholders, who show up upon the call of the board of directors, or shares selected applying the policies adopted by the general meeting or shares selected at random. If the company holds its own shares, the general meeting may decide that the reduction of the registered capital shall be carried out entirely or partially by withdrawing such shares from circulation. The general meeting shall determine detailed rules for withdrawing shares from circulation.
- Unless there is an agreement with the shareholders, shares may only be withdrawn from circulation against a reasonable consideration, provided this is expressly admitted and regulated by the articles of association at the time of subscription of the shares.
- Paper shares to be withdrawn from circulation shall be surrendered by the shareholders to the company for their destruction.
- Book-entry shares shall be withdrawn from circulation through their deletion in the register of securities established by a special act. The deletion of book-entry shares shall be provided for by the board of directors without undue delay following the registration of the reduced registered capital into the Companies Register.

### Section 214

- The board of directors shall invite shareholders, in the manner prescribed by the law or by the articles of association for the convocation of the general meeting, to surrender the shares for their exchange or earmarking of a lower nominal value or for the purpose of their withdrawal from circulation.
- The board of directors shall declare null and void any paper shares, which are not surrendered to the company for their withdrawal from circulation by the term set forth in Section 211 subsection 2f) above. The fact that such shares have been declared null and void shall be advised by the board of directors to the affected shareholders in the manner prescribed by the law or by the articles of association for the convocation of the general meeting.
- If any shareholder fails to surrender, by the date specified in the resolution of the general meeting, its shares for their exchange or for earmarking a lower nominal value, the board of directors shall invite the shareholder, in the manner prescribed by the law or by the articles of association for the convocation of the general meeting, to surrender its shares within an additional term determined thereby. The shareholders shall be warned that in case of default their shares shall be declared null and void.
- The board of directors shall declare null and void any shares, which are not surrendered by the additional term above notwithstanding the reminder of the company, and shall issue new shares in their stead. The fact that the shares were declared null and void shall be advised by the board of directors to the affected shareholders in the manner prescribed by the law or by the articles of association for the convocation of the general meeting.

(5) New shares, which were issued in stead of the shares declared null and void pursuant to subsection 4 above, shall be sold by the board of directors without undue delay. The proceeds from the sale of such shares, after deducting any expenses incurred by the company in connection with the declaration of nullity of the shares and their sale, shall be paid by the company without undue delay to the affected ex-shareholder, or, as appropriate, the company shall deposit the proceeds in custody pursuant to a special act.

#### **Section 215**

(1) Within 30 days from the date of publication of filing of the resolution of the general meeting to reduce the registered capital into the Collection of Deeds, the board of directors shall give notice to all the known creditors of the company, the claims of which towards the company accrued prior to the publication above, that the registered capital is to be reduced and the extent thereof, together with a reminder of their rights pursuant to subsection 3 below.

(2) Furthermore, a notice referred to in subsection 1 above concerning the reduction of the registered capital shall be published at least twice with a minimum interval of 30 days in between the two publications.

(3) Creditors of the company, which have any debts receivable from the company as of the date of publishing of the notice of filing of the resolution of the general meeting concerning the reduction of the registered capital into the Collection of Deeds, may demand that the company provide an adequate security of their claims within 90 days from the date on which they received the notice, otherwise within 90 days of the last published notice. The right above shall not inure to the benefit of those creditors, the claims of which have already been secured by an adequate security.

(4) If the company and its creditors fail to come to an agreement concerning the security of the claims of the creditors, the court shall take a decision on the matter taking into consideration the nature and the amount of the claim in question.

(5) No payments may be made to shareholders due to the reduction of the registered capital prior to the expiration of the time periods referred to in subsection 3 above, prior to providing an adequate security to all the lawful creditors of the company, which have file proofs of their debts in due time in accordance with subsection 3 above, and prior to the termination of legal proceedings referred to in subsection 4 above by a final and non-appealable decision of the court. The provisions of Section 216 subsection 3 below shall hereby not be affected.

(6) If the company makes a payment to shareholders in contrast with the provisions of subsection 4 above, the directors shall be liable jointly and severally for the liabilities of the company towards the creditors, whose debts receivable from the company have not been secured as required in subsection 3 above, in case it is impossible to satisfy such debts out of the property of the company.

#### **Section 215a**

(1) The provisions of Section 215 above may be waived in case of reduction of the registered capital through a reduction of the nominal value of shares with the exclusive purpose to cover the losses suffered by the company. Such a purpose of reduction of the registered capital must be expressly indicated in the resolution of the general meeting, otherwise such a resolution shall be void.

(2) The proceeds raised from the reduction of the registered capital pursuant to subsection 1 above may only be used for the purposes, for which the reduction of the registered capital was

made. Such proceeds can not be used to make payments to shareholders or to waive the duty of the shareholders to pay up the outstanding fraction of the issue price of the shares.

(3) The shareholders shall refund to the company any payments received in contrast with the provisions of subsection 2 above. The provisions of Section 179 subsection 1 above shall hereby not be affected. The directors shall be liable jointly and severally for the performance of the duty above.

#### **Section 215b**

(1) The provisions of Section 215 above may be waived in case of reduction of the registered capital through withdrawal of shares from circulation, provided that the shares, the issue price of which was fully paid up:

- a) are surrendered by the shareholders for the purpose of reduction of the registered capital free of charge, or
- b) are withdrawn from circulation against consideration, which may only be paid out of net profits pursuant to Section 179 subsections 3 and 4 above.

(2) If the registered capital is reduced pursuant to subsection 1 above, the reserve fund must be replenished for an amount equal to the aggregate nominal value of the shares withdrawn from circulation.

#### **Section 215c**

(1) The general meeting may decide to reduce the registered capital even below its minimum limit prescribed by the law, provided that at the same time it takes a decision to increase the same to a level, which is equal to or higher than the minimum limit prescribed by the law. The decision concerning the increase of the registered capital shall make reference to the amount of the registered capital reduced in accordance with the resolution of the general meeting concerning the reduction of the registered capital.

(2) The resolution of the general meeting concerning reduction of the registered capital and its subsequent increase pursuant to subsection 1 above shall be filed into the Collection of Deeds upon registration of the increased registered capital into the Companies Register. Only the increased registered capital specified in the resolution of the general meeting to increase the registered capital shall be recorded in the Companies Register. The reduction of the registered capital shall be effective in parallel with the effects of the increase of the registered capital. The provisions of Section 216 subsection 2 below shall not apply.

(3) The provisions concerning reduction and increase of the registered capital shall apply to the reduction and increase of the registered capital made pursuant to subsection 1 above, *mutatis mutandis*.

#### **Section 216**

(1) The reduction of the registered capital shall come into effect as of the day of its entry in the Companies Register.

(2) Prior to the entry of the reduced registered capital into the Companies Register, the company can not make payments in favor of shareholders, or waive or reduce the outstanding fractions of the nominal value of their shares by virtue of the reduction of the registered capital.



### **Section 217**

(1) Upon its incorporation the company shall establish a reserve fund of not less than 10% of the registered capital. The reserve fund shall be replenished on an annual basis by an amount prescribed by the articles of association, which may not be lower than 10% of the net profits reported in the ordinary financial statements, until it shall have attained the limit prescribed in the articles of association, which however shall not be lower than 20% of the registered capital.

(2) The board of directors shall take decisions concerning the use of the reserve fund, unless the articles of association provide otherwise.

(3) In case the reserve fund is established out of the share premium (difference between the contribution and the nominal value of the shares) and if any payment made is not sufficient to cover both the nominal value and the share premium, the payment shall be used preferably to cover the share premium.

## **8**

### **WINDING-UP OF THE COMPANY**

#### **Section 218**

A decision to wind up the company shall be taken by the general meeting. The provisions of Section 69 above shall apply to the winding-up and deletion.

### **MERGER AND TAKEOVER OF THE COMPANY**

#### **Section 218a**

(1) In addition to the data required by Section 69 subsection 6 above, any merger or takeover agreement must be executed as a notarial deed and must specify:

- a) the exchange rate between the shares of the successor company to be exchanged against the shares of the companies to be deleted, and a specification of their shapes, forms, classes and nominal values and, as appropriate, any notes concerning restricted transferability of registered shares. The provisions of Section 69 subsection 6b) above shall not apply,
- b) if any compensation is to be paid to the shareholders of the companies to be deleted, the amount of such a compensation. The aggregate compensation in cash shall not exceed 10% of the nominal value of shares to be issued by the successor company to the shareholders of the companies to be deleted,
- c) details concerning the procedure of exchange of shares of the successor company against the shares of the companies to be deleted or, as appropriate, concerning the payment of the compensation in cash, including the terms, by which shares are to be surrendered for their exchange or by which compensation in cash is to be paid,
- d) specification of the purchase price of shares, which the successor company must purchase according to Section 218j below, and the terms of payment thereof,
- e) any details concerning the rights of the shareholders of the companies to be deleted to share the profits of the successor company. The provisions of Section 69 subsection 6e) above shall hereby not be affected,
- f) specification of the rights, which the successor company shall grant to the shareholders of the companies to be deleted holding priority shares, or to the holders of priority or convertible bonds or, as appropriate, any other securities to which special rights are

attached and which were issued by the companies to be deleted, or any benefits proposed in favor of such parties,

g) any special benefit, which is to be granted to the auditors, directors or members of the supervisory boards of the companies involved on the merger or takeover.

(2) The draft of the merger agreement or takeover agreement must be reviewed, with respect to each of the companies involved on the merger or takeover, by an independent auditor appointed by the court upon proposal of the board of directors. Upon joint proposal of the boards of directors of the companies involved on the merger or takeover, the court may appoint a sole auditor or several joint auditors with respect to all the companies above.

(3) If one auditor is appointed, such auditor shall draw a written report with its findings from the review of the merger or takeover agreement. If there are several auditors, they may draw a joint report concerning all the companies involved on the merger or takeover. The written report above must include, but not be limited to:

- a) a statement of the auditor whether the exchange rate between the shares (including any compensations) is reasonable,
- b) the method(s) with reference to which the exchange rate between the shares was determined,
- c) an opinion as to whether the method(s) is reasonable for the transaction, and a determination of the exchange rate according to each of the methods used. A statement specifying the importance awarded to the individual methods at the determination of the exchange rate,
- d) special difficulties arisen at the determination of the exchange rate, if any.

(4) Each of the auditors shall be entitled to receive any information and documents from any of the companies involved on the merger or takeover, which are necessary to prepare the report under subsection 3 above, and may carry out the necessary inspection in such companies.

(5) The draft of the merger or takeover agreement shall be filed into the Collection of Deeds with respect to each of the companies involved on the merger or takeover. A notice of filing of the draft merger or takeover agreement into the Collection of Deeds must be published not later than 30 days prior to the date of the general meeting, which is supposed to approve the same.

#### **Section 218b**

(1) The board of directors of each of the companies involved on the merger or takeover shall prepare a detailed written report explaining and justifying, from the legal and economic points of view, the merger or the takeover. Such a report shall contain data from the draft merger or takeover agreement, including, but not limited to the exchange rate between the shares. The report must also specify special difficulties arisen at the determination of the exchange rate, if any.

(2) The supervisory board of each of the companies involved on the merger or takeover shall review the contemplated merger or takeover, the draft of the merger or takeover agreement and the report of the board of directors referred to in subsection 1 above, and shall submit its opinion concerning the contemplated merger or takeover to the general meeting.

#### **Section 218c**

(1) The merger or the takeover agreement shall be approved, upon proposal of the boards of directors, by the general meetings of all the companies to be deleted and, in case of a takeover, also by the general meeting of the successor company. Such a decision must be approved by a

two-thirds majority of votes of the attending shareholders, while a notarial deed must be executed. If several classes of shares are outstanding, the agreement must be approved by a two-thirds majority of votes of the attending shareholders with respect to each class of the shares.

(2) The shareholders must have available in the registered office of each of the companies involved on the merger or takeover, at least 30 days prior to the date of the general meeting, which is supposed to deal with the merger or the takeover, the following documents for their review by the shareholders:

- a) draft of the merger or takeover agreement,
- b) financial statements and reports referred to in Section 192 subsection 2 above with respect to all the companies involved on the merger or takeover, or, as appropriate, of their legal predecessors for the past three years. In case any of the companies was incorporated later and there was no legal predecessor, for all the years of its existence,
- c) interim financial statements as of a date, which can not be earlier than the first day of the third month preceding the date of the draft merger or takeover agreement, in case the last ordinary financial statements have been prepared as of a date, which is more remote than six months from the date of the draft merger or takeover agreement,
- d) reports of the boards of directors of all the companies involved on the merger or takeover referred to in Section 218b subsection 1 above,
- e) reports of auditors with respect to all the companies involved on the merger or takeover or a joint report of auditors pursuant to Section 218a subsection 3 above.

(3) The interim financial statements under subsection 2c) above shall be prepared using the same methods and classification as the last ordinary financial statements preceding the preparation of the draft merger or takeover agreement.

(4) Each shareholder of the companies involved on the merger or takeover may request copies of documents referred to in subsection 2 above or their parts, or, as appropriate ask the company to send the same to the address specified thereby, and the company shall be obliged to make such documents available to the shareholder free of charge. The shareholders shall be warned of their rights above in the invitation to or in the notice of the general meeting. The articles of association may specify other manner, in which the board of directors shall be obliged to make available to the shareholders the documents referred to in subsection 2 above.

(5) If the takeover of a company requires any amendments to the articles of association of the successor company and such amendments are not included in the takeover agreement, the successor company must approve the same together with the takeover agreement. The provisions of subsection 1 above shall apply to any decisions concerning the approval of amendments to the articles of association.

#### **Section 218d**

(1) The provisions of Section 172 above shall apply, *mutatis mutandis*, to the establishment of the successor company, while the provisions of Section 59 subsection 3 and Section 163 subsections 1e) through g) above shall not apply.

(2) If the takeover requires an increase of the registered capital of the successor company, the provisions of Section 59 subsection 3, Section 202 subsection 3, Section 203 subsection 1, Section 203 subsections 2e) through j), Section 203 subsection 3 through 5, Sections 204, 205, Section 206 subsections 2b) through h) and Section 206 subsections 3 and 4 shall not apply to such an increase of the registered capital.

#### **Section 218e**

(1) Following the registration of the merger or takeover into the Companies Register, the board of directors of the successor company shall provide for a prompt exchange of the shares of the successor company against the shares of the companies to be deleted or, as appropriate, for the payment of the compensation in cash. The provisions of Section 213 subsections 6 and 7 and Section 214 above concerning the withdrawal of shares from circulation shall apply to the exchange of shares *mutatis mutandis*.

(2) It shall not be admissible to issue the shares of the successor company against any shares held by:

- a) the successor company or a party acting in its own name, but for the account of the successor company,
- b) the company to be deleted or a party acting in its own name, but for the account of the company to be deleted.

#### **Section 218f**

(1) The creditors, which have, as of the effective date of the merger or takeover, debts not yet due for payment and payable by any of the companies involved on the merger or takeover, may claim from the successor company, in case the recoverability of their debts is impaired due to the merger or the takeover, an adequate security of their outstanding claims, unless their claims have already been adequately secured. The claim above must be made within six months from the publication of the notice of merger or takeover. The provisions of Section 215 subsection 4 above shall apply *mutatis mutandis*.

(2) The holders of priority or convertible bonds or, as appropriate, any other securities to which special rights are attached and which were issued by the companies to be deleted, must be granted by the successor company rights ranking *pari passu* with their rights towards the companies to be deleted. The provision above shall not apply if the changes to their rights have been approved by each of the holders of such securities or if the successor company is obliged to redeem such securities from their holders.

#### **Section 218g**

(1) The members of the board of directors or the supervisory board of each of the companies to be deleted, who are in breach of their duties prescribed by this Act at the preparation and implementation of the merger or takeover transactions, shall be liable jointly and severally for any damage caused thereby to the shareholders of the companies to be deleted.

(2) The auditors of each of the companies to be deleted shall be liable for the damage, which they caused to the shareholders of the companies to be deleted due to a breach of any of the duties prescribed by this Act and special legislation at the preparation of their report referred to in Section 218a subsection 3 above. The auditor shall be discharged of his liability at the same terms, which apply to the members of the board of directors and the supervisory board.

#### **Section 218h**

(1) Following the registration of the merger or takeover into the Companies Register, it shall not be admissible to file an action for the declaration of the merger or takeover null and void otherwise than by filing an action with the court asking to declare null and void the resolution of the general meeting authorizing the merger or the takeover and approving the merger or the takeover agreement pursuant to Section 183 above. The provisions of Section 68a above and the

provisions of special legislation shall hereby not be affected. An action for the declaration of the merger or takeover null and void must be filed not later than six months after the date, on which the merger or the takeover comes into effect.

(2) The reason for the filing of an action with the court asking to declare null and void the resolution of the general meeting authorizing the merger or the takeover and approving the merger or the takeover agreement may not lie in the fact that the exchange rate between the shares and the amount of the compensation in cash are not adequate or that the data concerning the exchange rate between the shares and the amount of the compensation in cash disclosed in the report of the board of directors pursuant to Section 218b subsection 1 above or in the report of the auditor pursuant to Section 218a subsection 3 above are contrary with the law.

(3) The decision of the court declaring null and void the resolution of the general meeting authorizing the merger or the takeover and approving the merger or the takeover agreement shall be filed into the Collection of Deeds.

(4) If the court declares null and void the resolution of the general meeting authorizing the merger or the takeover and approving the merger or the takeover agreement, all the companies involved on the merger or takeover shall be jointly and severally liable for and entitled to any rights and obligations, which accrued to the successor company between the date of registration of the merger or the takeover into the Companies Register and the date of publishing of the notice of filing of the decision of the court above into the Collection of Deeds.

#### **Section 218i**

(1) If the exchange rate between the shares or the compensation in cash, if any, as specified in the merger or the takeover agreement, are not adequate, each of the shareholders of the companies involved on the merger or takeover shall be entitled to a settlement in form of a compensation in cash payable by the successor company.

(2) Only those shareholders shall be entitled to make the claim under subsection 1 above with the court, which:

- a) were holding the shares of either of the companies involved on the merger or takeover as of the date of the general meeting, which authorized the merger or the takeover, and which did not, by the date of filing of their claims with the court, dispose of any of the shares of the deleted company or the successor company acquired thereby in exchange for the shares of the deleted company, and
- b) did not waive their rights to the compensation.

(3) A shareholder may waive its right to the compensation. The waiver shall be effective if made in writing and served upon the company or, in case the shareholder waives its right to the compensation at the general meeting, if recorded in the minutes. The waiver of the right to the compensation shall be effective also vis-a-vis the transferee of the shares, which are affected thereby.

(4) The action referred to in subsection 2 above can not be filed after one year shall have elapsed from the date of registration of the merger or the takeover into the Companies Register, after which the respective entitlement shall be time-barred.

(5) The decision of the court, which grants to any shareholder the right to a compensation, shall be binding upon the successor company, to the extent of the right granted to such a shareholder, and shall be effective also vis-a-vis the other shareholders, while the successor company shall be obliged to pay to the shareholders, with respect to each share, which was issued in exchange of the shares of the deleted companies, the same compensation in cash, or, as appropriate, issue

additional shares.

(6) If the exchange rate between the shares was not adequate, the shareholders shall not be obliged to surrender to the successor company any shares or any compensation in cash, which were received thereby in good faith applying such an exchange rate.

#### **Section 218j**

(1) The shareholders of the successor company, which were holding shares on any of the companies involved on the merger or takeover on the date of the general meeting authorizing the merger or the takeover and approving the merger or the takeover agreement, were attending such a general meeting, voted against the merger or the takeover agreement, and asked to record their disapproval into the minutes from the general meeting, may request from the successor company to purchase the shares, which were acquired thereby in exchange of the shares held on the company deleted as a result of the merger or takeover. The eligible shareholders must be warned of the right above in the invitation to or notice of the general meeting, which is supposed to approve the merger or the takeover agreement.

(2) The successor company shall send or publish a proposal of the agreement concerning the purchase of shares from the shareholders in the manner prescribed by the articles of association for the convocation of the general meeting within one month from the date of publication of the registration of the merger or the takeover in the Companies Register. If the agreement proposal is being published, the provisions concerning the public offer (Section 276 below) shall apply *mutatis mutandis*.

(3) The eligible shareholders must be granted a time period of not less than 14 days for the acceptance of the agreement proposal referred to in subsection 2 above.

(4) The purchase price of the shares must be adequate to the exchange rate between the shares of the successor company and the shares of the company to be deleted, plus the compensation in cash, if any, and must be the same with respect to each share. The determination of the purchase price shall be included in the merger or the takeover agreement.

(5) If the purchase price is not adequate, each of the shareholders, who accepted the agreement proposal referred to in subsection 2 above, shall be entitled to a settlement in form of a compensation in cash. The provisions of Section 218i subsections 4 and 5 above shall apply *mutatis mutandis*.

#### **Section 218k**

(1) If a takeover transaction is to be carried out and the successor company or the parties acting in their own names, but for the account of the successor company, hold more than 90% of voting shares of the companies to be deleted (but not all the shares), the takeover of the company does not require any decision of the general meeting of the successor company authorizing the takeover and approving the takeover agreement, provided that:

- a) the successor company performs its duty referred to in Section 218a subsection 5 above not later than 30 days prior to the date of the general meeting of the companies to be deleted,
- b) any of the shareholders of the successor company may review, in the registered office of the successor company and at least 30 days prior to the date of the general meeting of the companies to be deleted, the documents referred to in Section 218c subsections 2a) through c) above. The provisions of Section 218c subsections 3 and 4 above shall hereby not be affected.

(2) In case of takeover of companies pursuant to subsection 1 above, the shareholder(s) of the

successor company holding shares with the aggregate nominal value equal to or more than 5% of the registered capital, may request convocation of the general meeting, which is supposed to authorize the takeover and approve the takeover agreement. The articles of association may specify that the right above shall inure also to the benefit of shareholder(s) holding shares with the nominal value less than 5% of the registered capital.

(3) In case of takeover of companies pursuant to subsection 1 above, the provisions of Section 218a subsections 2 through 4 above, Section 218b and Section 218c subsections 2 through 4 above need not apply if the takeover agreement contains an undertaking of the successor company to purchase from all the minority shareholders of the companies to be deleted, the shares, which they shall acquire in exchange of the shares of the companies to be deleted. The provisions of Section 218j subsections 2 through 5 above shall apply to the purchase of such shares.

(4) If there is a takeover and the successor company or the parties acting in their own names, but for the account of the successor company, own all the voting shares of the companies to be deleted, the provisions of this Act concerning the merger shall apply, save for the provisions of Section 69 subsection 6b), and e), Section 69a subsection 1b), Section 218a subsections 1a) through d), Section 218a subsections 2 through 4, Section 218b, Section 218c subsections 2d) and e), Section 218g, Section 218h subsection 2, Section 218i and Section 218j above. The provisions of Section 218c subsection 1 above need not apply, if the conditions set forth in Section 218k subsections 1a), and b), and in Section 218k subsection 2) above are satisfied.

#### **Section 218l**

(1) A takeover of a limited liability company by a joint stock company, as a result of which the limited liability company shall be deleted and its assets and liabilities taken over by the joint stock company, is admissible.

(2) The provisions of subsection 1 above shall apply to the takeover pursuant to Sections 218a through 218k above, *mutatis mutandis*. The provisions of Section 152a above shall apply to the limited liability company to be deleted.

### **SPLIT OF THE COMPANY**

#### **Section 218m**

(1) Unless the law provides otherwise, the provisions of Sections 218a through 218j above shall apply to the split of the company *mutatis mutandis*.

(2) If there is a split of the company, the provisions of this Act concerning the split agreement or the takeover agreement shall apply to the project of split, *mutatis mutandis*. Similarly, the provisions of this Act applicable to merged or taken over companies shall apply to the companies, which are to be wound up as a result of a split, while the provisions of this Act applicable to successor companies shall apply to the companies, which arise as a result of a split, and to already existing companies, which are successors-in-law of the companies wound-up as a result of split of a company by takeover.

#### **Section 218n**

(1) The contributions in kind made to the successor companies must be appraised by official appraisers as required in Section 59 subsection 3 above. Such an appraisal may also be issued by the auditor(s), if appointed by the court to review the project of split of the company pursuant to

Section 218a subsection 2 above and are not engaged as court appraisers. The opinion of the auditors must contain the essentials under Section 59 subsection 3 above.

(2) In addition to the information under Section 218b subsection 1 above, the report of the board of directors must also contain an explanation and justification of the criteria of allocation of shares, explanation concerning expert appraisals concerning the contributions in kind to the successor company referred to in subsection 1 above, and also a note that such expert appraisals have been filed with the Collection of Deeds.

(3) The board of directors of the company to be deleted as a result of the split shall be obliged, in case of split of the company by takeover, to inform the general meeting of the company to be deleted and the boards of directors of the successor companies, of any material change to the assets and liabilities of the company, which occurred between the date of the project of split and the date of the general meeting of the company to be deleted, which is supposed to approve the split project.

(4) The provisions of Section 218a subsections 2 through 4, Section 218b, Section 218c subsections 2c), d) and e) and Section 218n subsections 2 and 3 above shall not apply if so agreed by all the shareholders of the company to be deleted as a result of the split and, in case of a split by takeover, also by the shareholders of the successor companies.

#### **Section 218o**

(1) If a split transaction by takeover is to be carried out and the successor companies hold all the voting shares of the company to be deleted, the transaction does not require any decision of the general meeting of the company to be deleted as a result of the split, provided that:

- a) the successor companies perform their duties referred to in Section 218a subsection 5 above not later than 30 days prior to the effective date of the split,
- b) any of the shareholders of the company to be deleted as a result of the split and of the successor companies may review, in the registered office of the company, the shares of which are held thereby and at least 30 days prior to the effective date of the split, the documents referred to in Section 218c subsection 2 above. The provisions of Section 218c subsection 3 and 4 above shall hereby not be affected.

(2) In case of split by takeover pursuant to subsection 1 above, the shareholder(s) of the company to be deleted as a result of the split holding shares with the aggregate nominal value equal to or more than 5% of the registered capital, may request the convocation of the general meeting, which is supposed to authorize the split. The articles of association may specify that the right above shall inure also to the benefit of shareholder(s) holding shares with the nominal value of less than 5% of the registered capital.

(3) If no general meeting of the company to be deleted as a result of the split is convened to approve the split by takeover as provided in subsection 1 above, the duty of the board of directors of the company to be deleted referred to in Section 218n subsection 3 above shall apply to the period since the date of preparation of the split project.

#### **Section 218p**

(1) If there is a split of a company by takeover, the project of split need not be approved by the general meeting of the successor company in the following instances:

- a) each successor company performs its duty under Section 218a subsection 5 above not later than 30 days prior to the contemplated date of the general meeting of the company to be wound up as a result of split by takeover, which is supposed to approve the split project,

b) the shareholders of all the successor companies are given, at least 30 days prior to the date under a) above, an opportunity to view, in the registered offices of their companies, the documents referred to in Section 218c subsection 2; the provisions of Section 218c subsections 3 and 4 shall thereby not be affected,

c) the shareholder(s) of the successor company, who hold shares with the aggregate nominal value equal to not less than 5% of the registered capital, have the right to request convocation of a general meeting, which is to approve the split of the company; the articles of association may determine that the right above shall inure also to the benefit of that shareholder (those shareholders), who holds shares with the aggregate nominal value lower than 5% of the registered capital.

## LIQUIDATION OF THE COMPANY

### Section 219

(1) The general meeting shall appoint a liquidator.

(2) Unless the articles of association provide otherwise, the shareholders referred to in Section 181 subsection 1 may demand the Register Court to remove a liquidator appointed by the general meeting and to appoint another person as liquidator, justifying the reasons thereof.

(3) A liquidator, who has not been appointed by the court, may be removed by the general meeting and replaced by another liquidator.

### Section 220

(1) After having satisfied the claims of all the creditors, the liquidation balance shall be distributed among the shareholders pro rata to the nominal value of their shares, unless the articles of association provide otherwise.

(2) If the outstanding shares are not fully paid up, only those fractions which have been paid shall be redeemed, while the remaining portion of the liquidation balance shall be distributed amount the shareholders pro rata to the nominal value of their shares.

(3) If the liquidation balance is not sufficient for the redemption of the nominal value of the shares, the liquidation balance shall be distributed among the shareholders pro rata to the paid up fractions of the nominal value of their shares.

(4) The right to share the liquidation balance may be transferred as a separate right starting from the date of approval of the liquidation distribution proposal.

### Section 220a

(1) If there are any paper shares outstanding, following the approval of the financial statements, the final report from the liquidation and the proposal of distribution of the liquidation balance, the liquidator shall invite the shareholders, in the manner prescribed by the law and by the articles of association for the convocation of the general meeting, to surrender their shares for destruction by a specific date. Upon surrender of its shares, the shareholder shall be entitled to the payment of its share of the liquidation balance. Any shares so surrendered shall be destroyed by the liquidator.

(2) If any shareholder fails to surrender its paper shares upon request of the liquidator, the liquidator shall proceed as provided in Section 214 subsection 2 above (*mutatis mutandis*) and shall deposit the share of the liquidation balance attributed to the shares declared null and void in custody pursuant to a special act.

(3) If there are any book-entry shares outstanding, following the approval of the financial statements, the final report from the liquidation and the proposal of distribution of the liquidation balance, the liquidator shall provide for their deletion from the register of book-entry securities established by a special act. Upon deletion of its shares from the register of securities established by a special act, the shareholder shall be entitled to the payment of its share of the liquidation balance.

(4) The Register Court shall only delete the company from the Companies Register after a proof is submitted showing that all the paper shares of the company were destroyed or declared null and void, or that all the book-entry shares of the company were deleted from the register of securities.

## CHAPTER TWO CO-OPERATIVES

### PART I FUNDAMENTAL PROVISIONS

#### Section 221

(1) A co-operative shall be a community of an open number of members established either to conduct business, or to satisfy any economic, social or other needs of its members.

(2) The business name of a co-operative must include the words „družstvo“.

(3) A co-operative shall have no less than 5 members. The above shall not apply if two or more members of the co-operative are legal entities. The joining of new members or the withdrawal of the existing members from the co-operative shall not affect the continued existence of such a co-operative, subject to the compliance with the conditions above.

#### Section 222

(1) A co-operative shall be a legal entity. The co-operative shall be liable for any breach of its obligations with all its property.

(2) The members of the co-operative shall not bear liability for the obligations of the co-operative. However, the by-laws may provide that in order to cover the losses suffered by the co-operative, all its members or only some of them shall be obliged, with reference to a resolution passed by the members' meeting, make payments in favor of the co-operative, up to a certain level in excess of their contributions to the co-operative.

#### Section 223

(1) The registered capital of the co-operative shall consist of all the contributions of members, which the members have undertaken to pay up.

(2) The by-laws shall specify the amount of the co-operative's registered capital, which shall be recorded into the Companies Register (reference capital). The reference capital shall not be less than 50.000 Slovak Crowns.

(3) The condition for becoming member of a co-operative is the payment of the contribution defined in the by-laws (basic contribution) or the payment of a fraction thereof specified in the by-laws (admission contribution).

(4) If so admitted by the by-laws, a member of a co-operative may undertake to pay additional contributions and thus increase its interest in the co-operative at the terms and conditions set

forth in the by-laws.

(5) Contributions in kind shall be appraised as provided in the by-laws or as agreed among all the members at the time of establishment of the co-operative.

(6) A member shall pay up its basic contribution in excess of the admission contribution within three years, unless a shorter term is specified in the by-laws. The by-laws may authorize the members' meeting to make the members of the co-operative obliged to pay the outstanding fractions of contributions pledged thereby prior to their maturity, if a loss suffered by the co-operative so requires.

(7) The co-operative shall not be allowed to pay to its members any interest accruing on their contributions, unless the law provides otherwise.

(8) The by-laws of the co-operative or the members' meeting may authorize the board of directors to decide an increase of the registered capital of the co-operative up to a certain amount, using the net profits or other equity sources of the co-operative, which are not appropriated in the indivisible fund or in other funds of the co-operative. The members of the co-operative shall participate on the increase pro rata to their contributions, unless the by-laws provide for other terms of increase of the contributions of members on the registered capital of the co-operative. If this is strictly necessary to cover the losses suffered by the co-operative, which may not be covered from other equity sources, the members' meeting may decide to reduce the registered capital and to reduce the contributions of the co-operative members accordingly.

#### **Section 224**

##### **ESTABLISHMENT OF A CO-OPERATIVE**

(1) A co-operative shall be established at its constituent members' meeting.

(2) The constituent members' meeting:

- a) shall determine the amount of the reference capital;
- b) shall approve the by-laws;
- c) shall appoint the board as well as the audit committee.

(3) Those persons who have filed their applications to become members of the co-operative, shall be entitled to vote at the constituent meeting of that co-operative. Prior to taking decisions concerning matters set forth in subsection 2 above, the constituent meeting shall elect the chairman of the meeting. Until the time of such election, the meeting shall be chaired by the person who convened the meeting.

(4) The constituent meeting of the co-operative shall make appointments and pass resolutions by a majority of the attending members. An applicant may withdraw its application immediately after the voting on the by-laws, provided that such applicant voted against their approval.

(5) The constituent meeting of the co-operative shall result in the establishment of the co-operative, provided that the applicants for the membership in the co-operative have undertaken to pay up aggregate contributions equal to the amount of the reference capital. The basic contribution, or, as appropriate, the admission contribution, must be paid up to the designated member of the board at the terms determined by the constituent meeting within 15 days from the date thereof.

(6) A notarial deed shall be executed from the constituent meeting of the co-operative, which shall include, *inter alia*, the proceedings of the meeting, a list of members and the amounts of the individual contributions pledged thereby. A copy of the approved by-laws shall be attached to the notarial deed.

#### **Section 225**

(1) A co-operative shall be incorporated on the day of its registration into the Companies Register. At least one half of the reference capital must be paid up prior to filing the request of registration above.

(2) The request of registration shall be filed by the board. All the members of the board shall undersign such a request.

#### **Section 226**

(1) The by-laws of the co-operative must include the following essentials:

- a) the business name and the registered office of the co-operative;
- b) the scope of its business (activities);
- c) the terms of joining the co-operative and withdrawal therefrom, the rights and duties of the members vis-a-vis the co-operative and vice versa,
- d) the amount of the basic contribution and, if applicable, the amount of the admission contribution, the terms of payment of the contributions and the settlement procedure in case of termination of membership in the co-operative;
- e) the bodies of the co-operative and the number of their members, their respective terms of office, terms of appointment, scope of their powers, the terms of convocation and proceedings thereof;
- f) the use of profits and the coverage of losses, if any;
- g) the establishment and the use of the indivisible fund;
- h) other provisions, if so provided by this Act.

(2) If the by-laws require employment of the members with the co-operative, the by-laws may contain provisions regulating such employment. Such provisions shall not be in contrast with the labor law, unless the provisions of the by-laws are more beneficial to the members. If no specific provisions concerning employment are contained in the by-laws, the labor law shall apply.

(3) The members' meeting shall decide any amendments to the by-laws.

## **PART II**

### **COMMENCEMENT AND TERMINATION OF MEMBERSHIP**

#### **Section 227**

(1) Both individuals and legal entities may become members of a co-operative. If the by-laws require employment of the members with the co-operative, only individuals who completed the mandatory school attendance and have reached the age of 15 may become members of the co-operative.

(2) Membership in a co-operative shall commence, subject to the conditions under the law and the by-laws:

- a) if the co-operative is being established, on the date of its incorporation,
- b) if the co-operative is already established, upon acceptance of a written application for the membership by the cooperative,
- c) upon the transfer of membership, or
- d) in another manner provided for by the law.

(3) If the by-laws require employment of the members with the co-operative, and if the by-laws do not provide otherwise, then the membership shall commence on the date which is agreed as

the starting date of employment, and shall terminate on the date of termination of the employment.

(4) The membership in the co-operative shall not commence prior to the payment of the admission contribution.

(5) The by-laws contained detailed provisions governing the membership, its commencement and termination.

#### **Section 228**

The co-operative shall keep a register of all its members. The following details shall be entered into the register above: the business name and the registered office (if the member is a legal entity) or the name and the residence (if the member is an individual), and the contribution pledged and paid up by each member. Any changes affecting details entered in the register shall be recorded without undue delay. The board shall make the register available for review to any party giving proof of its legal interest. Members of the co-operative may view the register and ask for the issue of a certificate confirming their membership and the data recorded in such a register with respect thereto.

#### **Section 229**

(1) Any member may transfer its rights and duties to another member of the co-operative, unless such a transfer is excluded by the by-laws. Any agreement concerning the transfer of rights and duties of member to a third party shall be subject to its approval by the board. The by-laws may provide reasons excluding any such a transfer. A member may appeal to the members' meeting if the transfer is disapproved by the board. Upon approval of the transfer by the board or by the members' meeting, the transferee becomes member of the co-operative to the extent of the rights and duties of the transferor.

(2) The by-laws may describe instances, in which the board cannot disapprove the transfer of the rights and duties of member, or instances, in which an approval of the transfer by the board shall not be not required.

#### **Section 230**

No approval of the board shall be required for any transfer of the rights and duties associated with membership in a housing co-operative under a transfer agreement. The transfer of the rights and duties of member to the transferee shall be effective vis-a-vis the co-operative upon delivery of the transfer agreement, or at a later date set forth in the transfer agreement. The receipt by the co-operative of a written notice of the current member in forming of the transfer of its rights and duties, together with a written acceptance of the transferee shall produce the same effects as the delivery of the transfer agreement.

#### **Section 231**

(1) The membership may either terminate under a written agreement, by withdrawal, expulsion, issue of a bankruptcy order against the property of the member or dismissal of the petition in bankruptcy due to insufficient property of the member, or upon deletion of the co-operative from the Companies Register.

(2) In case of withdrawal, the membership shall terminate on the date set forth in the by-laws, which however shall not be later than six months from the date of service of a written notice of withdrawal to the board of the co-operative by the member.

(3) A member may be expelled, if it repeatedly and in spite of warning keeps breaching its duties of member or due to other serious reasons specified in the by-laws. An individual may also be expelled if convicted by a final judgement for a deliberate criminal offence against the co-operative or against any member of the co-operative. Unless the by-laws provide otherwise, the board shall take a decision as to the expulsion of a member and such a decision shall be served to the member in writing. The expelled member may file an appeal with the members' meeting.

(4) Upon proposal of the expelled member a court shall declare null and void the decision of the members' meeting to expel the member if it is contrary to the law or the by-laws.

#### **Section 232**

(1) The membership of an individual terminates upon his decease. The heir entitled to the member's rights and duties may apply for membership in the co-operative. The law or the by-laws may determine instances, in which the board cannot dismiss the application above or in which no approval of the board is required for the acquisition of the heir's rights and duties.

(2) The approval of the board is not required if the heir acquires rights and duties related to membership in a housing co-operative.

(3) An heir, who does not become a member, shall be entitled to a settlement share due to the deceased member.

(4) The membership of a legal entity in a co-operative shall terminate upon its liquidation, or if a bankruptcy order is made, or if the legal entity is deleted from the Companies Register. If the legal entity has a successor-in-law, the successor-in-law shall take over all the rights and duties of the ex-member.

#### **Section 233**

(1) If the membership terminates for the term of the co-operative's existence, the terminating member shall be entitled to a settlement share.

(2) The settlement share shall be determined as a ratio between the contribution paid up by the member, multiplied by the number of full years of his membership in the co-operative, and the aggregate of all members' contributions multiplied by the number of full years of their membership.

(3) The net business property of the co-operative resulting from the ordinary individual financial statements for the accounting period, in which the membership terminated, shall be relevant for calculating the settlement share. The assets making part of the indivisible fund shall not be taken into account when calculating the settlement share, nor, if the by-laws so imply, other reserve funds shall be considered. The contributions of members whose membership lasted less than one year prior to the day, on which the ordinary financial statements are compiled, shall not be taken into consideration.

(4) The settlement share shall be due for payment after the expiration of three months from the date of approval of the ordinary individual financial statements for the accounting period. There shall be entitlement to a profit share only with respect to the period of membership.

(5) The provisions of subsections 2 through 4 above shall apply unless the by-laws provide otherwise.

#### **Section 234**

(1) The settlement share shall be paid in cash. The by-laws may provide that if the member's contribution into the co-operative consisted partly or wholly of a transfer of the member's title to

real estate, the member may ask for the return of that property for the value, which is recorded in the co-operative books upon termination of the membership. If the settlement share is less than the value of the real estate to be returned, the member must pay the difference to the co-operative in cash. The by-laws may provide that a similar procedure shall apply when a member's contribution was paid in kind, by property other than real estate. The co-operative is liable towards the member if it disposes of the property, which makes its return impossible.

(2) A member may claim the return of agricultural land contributed to a co-operative as provided in subsection 1 above even if the by-laws do not address such a claim.

#### **Section 235 INDIVISIBLE FUND**

(1) Upon its incorporation the co-operative shall establish an indivisible fund equal to not less than 10% of the reference capital. This fund shall be supplemented by no less than 10% of the annual profits until the fund shall have achieved the amount equal to one half of the reference capital of the co-operative. The by-laws may prescribe a higher limit of the indivisible fund or the establishment of further reserve funds.

(2) The indivisible fund may not be distributed among members for the entire term of the co-operative.

#### **Section 236 DISTRIBUTION OF PROFITS**

(1) The profits to be distributed among the members shall be determined by the members' meeting when discussing the ordinary financial statements.

(2) Unless the by-laws imply otherwise, a member's share in the profits to be distributed among the members shall be established as a ratio between the amount of that member's paid-up contribution and all the members' paid-up contributions. The shares of members whose membership lasted less than one year shall be reduced pro rata.

(3) The by-laws or a resolution of the members' meetings may define another method of determining the shares of profits to be distributed among members, if the by-laws so permit.

### **PART III CO-OPERATIVE BODIES**

#### **Section 237**

The following shall be the bodies of the co-operative:

- a) the members' meeting,
- b) the board,
- c) the audit committee,
- d) other co-operative bodies contemplated in the by-laws.

#### **Section 238**

(1) Only members of the co-operative older than 18 years of age and representatives of legal entities that are members of the co-operative may be appointed to the offices of members of co-operative bodies.

(2) If a legal entity is a member of the co-operative, it must authorize an individual to act on its behalf in a co-operative body.

(3) Unless this Act provides otherwise, the following conditions must be satisfied for a resolution of the members' meeting, or the board, or the audit committee to be valid: any meeting of such bodies must be convened in due manner, must be attended by more than half of its members and the resolution must be approved by a majority of the votes of the attending parties. This Act or the by-laws shall define resolutions, which require approval by a qualified majority.

### **MEMBERS' MEETING**

#### **Section 239**

(1) The supreme body of a co-operative shall be a meeting of the members of such a co-operative (hereinafter referred to only as „members' meeting“).

(2) The members' meeting shall be held as often as prescribed by the by-laws, but no less than once a year. Notices of the members' meeting shall be served as provided in the by-laws.

(3) A members' meeting must always be convened if the convocation is requested in writing by no less than one third of all members of the co-operative or by the audit committee, as well as in other cases referred to in the by-laws.

(4) The members' meeting shall have the following powers:

- a) to amend the by-laws,
- b) to appoint and to remove members of the board and members of the audit committee,
- c) to approve the ordinary individual financial statements and extraordinary individual financial statements,
- d) to take decisions concerning the distribution and the use of the profits, or the coverage of losses,
- e) to take decisions concerning the increase or the reduction of the reference capital,
- f) to take decisions concerning essential strategies for the further development of the co-operative,
- g) to take decisions concerning merger, take-over, split or another modes of winding-up of the co-operative, or change of its corporate form.

(5) The members' meeting may also take decisions on other matters concerning the co-operative and its business, if so stipulated by this Act, the by-laws, or if the members' meeting has reserved its right to decide on a certain matter.

(6) The by-laws of the co-operative may provide that the members' meetings shall be held in form of partial members' meetings. When passing a resolution, the votes cast at such partial members' meetings shall be summed-up. Partial members' meeting may not take decisions concerning the winding-up of the co-operative, change of its corporate form, and other matters referred to in the by-laws.

(7) If it is impossible to convene the members' meeting due to the size of the co-operative, the by-laws may provide that, to the extent determined therein, an assembly of delegates shall replace the members' meeting. Each delegate shall be elected by an equal number of votes. The by-laws may depart from the rule above if this is necessary in view of the organization of the co-operative.

(8) If the members' meeting does not constitute quorum, the board shall convene a substitute members' meeting, so that the substitute members' meeting is held within three weeks from the day on which the originally convened meeting should have taken place. The substitute members' meeting must have the same agenda and shall constitute quorum regardless of the provisions of



Section 238 subsection 3 above. A similar procedure shall apply to partial members' meeting and to meetings of delegates.

#### **Section 240**

- (1) At the voting each member shall be entitled to one vote, unless the by-laws provide otherwise.
- (2) If the by-laws so allow, a co-operative member may appoint another co-operative member to act as its agent at the members' meeting. The provision above shall not affect the provisions on powers of attorney issued under the law or by ruling of a court.

#### **Section 241**

- (1) Minutes shall be taken at each members' meeting and must include:
  - a) the date and the place of the meeting,
  - b) the resolutions passed at the meeting,
  - c) the votes cast,
  - d) unaccepted objections lodged by members, which requested such objections to be recorded in the minutes.
- (2) The following documents shall be attached to the minutes from the members' meeting: the attendance list, the invitation to the members' meeting, and any reference documents concerning the issues discussed at the meeting.
- (3) Each member shall be entitled to view the minutes and any attachments thereto.

#### **Section 242**

Upon a member's action, the court shall declare null and void a resolution passed by the members' meeting if such a resolution is contrary to the law or the by-laws of the co-operative. The member shall be entitled to file the action above on condition that it requested to record his objection in the minutes at the members' meeting, which passed the resolution, or that it gave notice to the board of its objection within one month from the date of that members' meeting. Such an action must be filed with the court not later than month from the date of the member's request to record its objection or on which it gave notice thereof to the board.

#### **Section 243** **BOARD**

- (1) The board shall manage the activities of the co-operative and take decisions concerning any of the co-operative's matters, which are not reserved to the authority of another body by this Act, or by the by-laws.
- (2) The board shall be a statutory body of the co-operative.
- (3) The board shall implement the resolutions of the members' meetings and shall be responsible for its actions to the latter. The board shall be represented by its chairman or vice-chairman vis-a-vis third parties, unless the by-laws imply otherwise. However, if an action at law taken by the board requires written form, the signatures of at least two members of the board shall be necessary.
- (4) The meetings of the board shall be convened as necessary. A meeting must be held within 10 days of receipt of a request by the audit committee, if, in spite of its warning no remedy has been provided.
- (5) The board shall elect the chairman from among its members, and the vice-chairman, as

appropriate, unless the by-laws stipulate their election by the members' meeting. The vice-chairman shall replace the chairman in the latter's absence. Other members of the board may also be authorized to represent the chairman, while the board shall determine the order, in which its members shall represent the chairman.

- (6) The chairman of the co-operative shall organize and chair the meetings of the board. If the by-laws so provide, the chairman shall also organize and manage the day-to-day business of the co-operative.
- (7) The by-laws may provide that the day-to-day business shall be organized and managed by a director to be appointed and removed by the board.

#### **Section 243a**

- (1) The members of the board shall discharge their offices with due care and in line with the interests of the co-operative and all of its members. In particular, the members of the board shall collect and at their decision making take into account any available information concerning such a decision, shall not disclose any confidential information and facts, the disclosure of which to third parties could cause damage to the co-operative or prejudice its interests or the interests of its members, and shall not, at discharging their duties, prefer their own interests or interests of certain members only or interests of third parties to the interests of the co-operative.
- (2) The members of the board, who are in breach of their duties, shall be liable jointly and severally to indemnify the co-operative against the damage, which was caused thereto. The member of the board shall not be liable for the damage after he shall have submitted evidence showing to have discharged his duties with due care and to have acted in good faith for the benefit of the co-operative. The members of the board shall not be liable for any damage caused to the co-operative at the implementation of a resolution of the members' meeting. The above shall not apply if the resolution of the members' meeting is contrary to the law or the by-laws. The members of the board shall not be discharged of their liability if their conduct has been approved by the Audit Commission.
- (3) Any agreements between the co-operative and the member of the board, which exclude or restrict the scope of liability of the member of the board, shall be forbidden. The liability of the member of the board can not be restricted or excluded by the by-laws. The co-operative may waive its claims to indemnity against the members of the board or make a settlement therewith, but not earlier than three years after the occurrence thereof, and only if the waiver is approved by the members' meeting.
- (4) The claims of the co-operative against the members of the board to indemnities may be made by a creditor of the co-operative in its own name and for its own account in case it is not able to satisfy its debt out of the property of the co-operative. The provisions of subsections 1 through 3 above shall apply *mutatis mutandis*. The claims of the creditors of the co-operative towards the member of the board shall not be extinguished even if the co-operative waives its claims to indemnities or enters into a settlement agreement with the members of the board. If a bankruptcy order is made against the property of the co-operative, the claims of the creditors shall be enforced towards the members of the board by the trustee in bankruptcy.

#### **Section 244** **AUDIT COMMITTEE**

- (1) The audit committee shall have the powers to monitor any and all the activities of the co-operative and to deal with complaints lodged by the co-operative members. The audit committee

shall be liable only to the members' meeting and shall be independent of the other co-operative bodies. The audit committee shall have no less than three members.

(2) The audit committee shall give its opinion concerning the ordinary and extraordinary individual financial statements and the proposal for the distribution of the profits or the coverage of the losses.

(3) The audit committee shall advise the board of any irregularities ascertained thereby and shall demand a remedy.

(4) The audit committee shall meet as necessary be, however at least once every three months.

(5) The audit committee shall elect its chairman, or the vice-chairman, as appropriate, from among its members, unless the by-laws provide that its member shall be elected by the members' meeting.

(6) The audit committee shall be entitled to demand from the board any information concerning the financial management of the co-operative. The board shall be obliged to disclose to the audit committee without undue delay any facts which may have material impact on the finance or the status of the co-operative and its members. The above shall apply also with respect to the chairman.

(7) The audit committee may authorize one or several members of the co-operative to take individual actions. Thereafter, such members shall be entitled to demand information to the extent of the powers of the audit committee.

(8) The provisions of Section 243a above shall apply, *mutatis mutandis*, to the duties of the members of the audit committee and their liability.

#### **Section 245**

##### **BODIES OF A SMALL SIZED CO-OPERATIVE**

(1) If the by-laws so determine, the powers of the board and the audit committee may be vested in the members' meeting, provided that the co-operative has less than 50 members.

(2) The statutory body of such a co-operative shall be its chairman, and, as appropriate, also another member authorized by the members' meeting. The provisions of Section 243a above shall apply *mutatis mutandis*.

(3) The procedure of decision-making and the statutory bodies of a co-operative with less than five members, all of which are legal entities, shall be defined in the by-laws.

(4) The provisions of Section 243 subsection 3 shall not apply to the statutory bodies contemplated in subsections 2 and 3 above.

#### **JOINT PROVISIONS CONCERNING MEMBERSHIP IN THE CO-OPERATIVE BODIES**

##### **Section 246**

(1) The by-laws shall define the term of office of the co-operative bodies, which however may not exceed 5 years.

(2) The first members of the co-operative bodies, which are organized after the establishment of the co-operative, may be appointed for the term of office of not more than 3 years.

(3) Unless the by-laws provide otherwise, members of the co-operative bodies may be re-elected.

(4) The representatives of legal entities, who are members of the co-operative bodies, shall have the same liability as if they were members of such bodies personally. The legal entity, which has

authorized a representative to act on its behalf in the co-operative, shall be liable for the representative's obligations arising out of such a liability.

##### **Section 247**

(1) No member of the board shall be allowed to discharge the office of member of the audit committee and vice versa.

(2) The by-laws may provide further instances of incompatibility of certain offices, or the circumstances in which a member of the co-operative may not be appointed as member of an elected co-operative body.

##### **Section 248**

(1) A member of the co-operative who has been appointed to an office may resign from his office, subject to a notice to be given to the body, of which he is member. The office shall terminate on the day, on which his resignation was discussed by the body competent thereto under the by-laws. Unless the by-laws provide otherwise, the resignation shall be discussed by the body that has appointed the withdrawing member. Such a body shall discuss the resignation at its meeting immediately following the receipt of a notice of resignation, however not later than three months. After the expiry of the period above, the resignation shall be deemed discussed.

(2) If the by-laws set forth that substitute members to the co-operative bodies shall be appointed, a substitute member shall take over the office from the withdrawing member according to the prescribed order.

(3) If no substitute member is appointed, the body may co-opt a co-operative member to discharge such office until the date of regular elections of a new member. The co-opted member shall have the same rights and duties as a properly appointed member of the respective body.

(4) The provisions of subsections 2 and 3 above shall apply also to the termination of the office due to death of the member.

##### **Section 249**

##### **BAN ON COMPETITIVE CONDUCT**

Members of the board and of the audit committee, procurators and director may neither be engaged as entrepreneurs, nor members of statutory bodies or supervisory bodies of other legal entities with a similar scope of activities. The by-laws may depart from the ban on competitive conduct above.

##### **Section 250**

##### **VOTING WITHIN THE BOARD AND THE AUDIT COMMITTEE**

(1) Each member of the board and the audit committee of the co-operative shall have one vote. The voting shall be public, unless the by-laws stipulate provide that the voting concerning certain issues shall be made by secret ballot. The respective body may decide the voting by secret ballot on a case by case basis.

(2) If the by-laws so permit, a resolution may be passed by votes cast in writing or by votes cast through means of communication, provided that all the members of the body concerned agree with such a voting procedure. In the case above, all those who vote shall be regarded as present (Section 238 subsection 3 above).

#### **Section 251**

(1) The board shall file claims on behalf of the co-operative for damages arising out of the liability of members of the co-operative bodies. The audit committee shall file claims against members of the board through its member, who shall be designated by the audit committee.

(2) Any member shall be entitled to make, on behalf of the co-operative, claims to indemnities which the co-operative has towards the member of the board liable for the damage caused to the company, claims to the payment of the pledged contribution against the member, who is in default, unless the members' meeting decided to expel such a member. No party (other than the member, who filed the respective action or his agents) shall be allowed to take any action in stead or on behalf of the co-operative within the framework of the legal proceedings.

(3) A member, who makes the claims referred to in subsection 2 above on behalf of the co-operative, shall bear the legal expenses. If the co-operative is adjudicated a refund of legal expenses, the obligor shall refund the same directly to the member, who made the claims above on behalf of the co-operative.

### **PART IV**

#### **ANNUAL FINANCIAL STATEMENTS AND ANNUAL REPORT**

#### **Section 252**

(1) The co-operative must prepare ordinary individual financial statements.

(2) The board shall submit to the member's meeting for their approval ordinary individual financial statements, extraordinary individual financial statements and proposals for the distribution of profits or coverage of losses, as provided in the articles of association.

(3) Upon their request the members of the co-operative may review the ordinary individual financial statements, extraordinary individual financial statements and the proposal for distribution of profits and coverage of losses.

#### **Section 253**

If a special act makes the co-operative obliged to issue an annual report, the board shall submit to the member's meeting for its review also an annual report attached to the ordinary or extraordinary individual financial statements. If the by-laws so determine, the board shall provide for the preparation of an annual report concerning the co-operative's business performance, including an overview of the business activities in the preceding year and their outlook for the future, as well as further facts prescribed by the by-laws. The annual report on the business performance shall be submitted by the board, together with the ordinary or extraordinary individual financial statements, to the members' meeting for its review.

### **PART V**

#### **WINDING-UP AND LIQUIDATION OF A CO-OPERATIVE**

#### **Section 254**

(1) A co-operative shall cease to exist upon its deletion from the Companies Register.

(2) A co-operative shall be wound-up:

- a) by a resolution of the members' meeting,
- b) upon termination of the bankruptcy proceedings following the implementation of the distribution schedule or upon termination of the bankruptcy proceedings in case the

property of the debtor is not sufficient to cover the expenses and the fee of the trustee or upon dismissal of a petition in bankruptcy due to the lack of property,

- c) by a court decision,
- d) due to the expiration of the term, for which the co-operative was established,
- e) upon achievement of the purpose, for which the co-operative was established.

(3) The resolution of the members' meeting concerning the winding-up shall have form of a notarial deed.

#### **Section 255**

(1) The resolution of the members' meeting concerning a merger, take-over or split of a co-operative must specify the successor-in-law and the property to be transferred to the successor. In the case of a split of a co-operative, the members' meeting shall determine how the co-operative's property and members shall be split. Legitimate interests of individual co-operative members shall be taken into consideration when determining the co-operative's split.

(2) A member, which does not agree with the transfer of its membership rights and duties to the successor-in-law of the co-operative, may withdraw from the co-operative with effect as of the date, on which such a transfer is to be carried out, subject to a notice to be given to the board within one week following the resolution of the members' meeting. The successor-in-law of the co-operative shall be bound to pay to the withdrawing member a settlement share arising from the member's claim under Section 233 above within one month from the transfer of the co-operative's property.

#### **Section 256**

(1) Upon a merger of co-operatives, the property and membership shall be taken over by a newly established co-operative as of the date of its registration into the Companies Register.

(2) Upon a take-over of a co-operative by another co-operative, the property and membership of the taken-over co-operative shall be transferred to the other co-operative on the date, on which the taken-over co-operative is deleted from the Company Register.

(3) Upon a split of a co-operative, the property of the co-operative and membership are transferred to the co-operatives, which have been established by virtue of that split as of the date, on which such co-operatives are registered in the Companies Register.

(4) The deletion of the wound-up co-operative and the incorporation of a new co-operative established by merger, or co-operatives established by split, as well as the incorporation of a company established as a result of change of corporate form of the co-operative shall be made in the Companies Register on the same day. The deletion of a co-operative wound-up by virtue of a take-over, and an amendment of the registration of a co-operative, which has taken it over, shall be made on the same day.

(5) Unless a resolution of the members' meeting implies otherwise, a co-operative member shall participate in the business of the successor co-operative with his member's contribution corresponding to his share in the liquidation balance which would be due to him if the co-operative were liquidated.

#### **Section 257**

(1) Upon a proposal made by a public authority, a co-operative body, a member of a co-operative, a person who proves to have legal interest, or ex-officio, the court shall order a winding-up of the co-operative, if:

- a) the number of members in the co-operative has dropped below the limit set out in Section 221 subsection 3 above,
  - b) the aggregate of members' contributions has been reduced below the limit set out in Section 223 subsection 2 above,
  - c) six months have elapsed since the expiration of the term of office of co-operative bodies' and new bodies have not been elected, or the members' meeting failed to be convened within such period, or the co-operative has not performed any business activities for more than six months,
  - d) the co-operative has breached the duty to establish the indivisible fund,
  - e) the co-operative is in breach with the provision of Section 56 subsection 3 above,
  - f) the law has been violated by the establishment, merger, or take-over of the co-operative,
  - g) the co-operative failed to file its individual financial statements with the Collection of Deeds for two or more accounting periods.
- (2) If the court is to decide, whether the wind-up a co-operative pursuant to subsection 1 above, prior to ruling on the winding-up of the co-operative the court shall set a period for a remedy (removal of the grounds, due to which the winding-up has been proposed), if a remedy is possible.

#### **Section 258**

- (1) The members' meeting may pass a resolution according to which a co-operative established for a definite period of time shall continue to exist even after the expiration of such period.
- (2) However, the resolution above must proceed the date of commencement of the distribution of the liquidation balance.

#### **Section 259**

- (1) Unless the law provides otherwise, the wound-up co-operative shall enter into liquidation. Liquidators shall be appointed in the manner specified in the by-laws of the co-operative, or, if not specified, they shall be appointed by the members' meeting.
- (2) Prior to distributing the liquidation balance, the liquidators shall prepare a proposal on the distribution of the liquidation balance that shall be discussed at the members' meeting. Any co-operative member shall be disclosed the distribution proposal upon its request.
- (3) The liquidation balance shall be distributed among the members in the manner stipulated by the by-laws. Unless the by-laws provide otherwise, contributions paid-up by the members to the co-operative shall be repaid. The residual portion of the liquidation balance shall then be distributed among those members, the membership of which in the co-operative lasted at least one year as of the day of the winding-up of the co-operative. Unless the by-laws provide otherwise, the residual portion of the liquidation balance shall be distributed among the members pro rata to their contributions to the registered capital of the co-operative. The provisions of Section 234 subsection 1 above shall apply to the return of contributions in kind *mutatis mutandis*.
- (4) Within three months of the date of the members' meeting, each co-operative member may file a petition with a court proposing to declare null and void the resolution on the distribution of the liquidation balance due its contrast with the law or the by-laws. If the court finds the proposal justified, it shall also decide on the distribution of the liquidation balance. The liquidation balance is not to be distributed prior to the expiration of a three month's period or prior to the effective date of the court ruling.

#### **Section 260**

##### **APPLICATION OF PROVISIONS ON COMPANIES AND PARTNERSHIPS**

Unless otherwise provided in this Chapter, the provisions of Chapter One, Part I (Sections 56 through 75 above) shall apply to this Chapter of the Code *mutatis mutandis*.

**TITLE THREE  
LAW OF CONTRACT**

**CHAPTER ONE  
GENERAL PROVISIONS**

**PART I  
SCOPE OF LEGAL PROVISIONS AND THEIR NATURE**

**Section 261**

(1) This Chapter of the Code shall regulate contractual relations between entrepreneurs when the circumstances indicate that such relations, on being established, relate to entrepreneurial activities.

(2) This Chapter of the Code shall also govern contractual relationships between the State, a self-governing territorial authority or a legal entity established under the law as a public institution, if related to the provision of public services or their own operations, and entrepreneurs at the conduct of their business. When concluding contracts on the provision of public services, state-owned organizations, which are not entrepreneurs, shall be deemed to be the state.

(3) Disregarding the nature of the participants (partners), this Chapter of the Code shall regulate contractual relations:

- a) between the founders of partnerships and companies, between partners, members and shareholders and their partnership or company, as well as between the partners, members and shareholders themselves, as regards relations concerning participation on the partnership or the company and relations arising from agreements on transfer of ownership interest the relations between a statutory body (or a members of a statutory body), the supervisory body of a partnership or company and the partnership and the company alone, and also the relations between the partners, members or shareholders and the partnership and the company alone related to the business of the company, as well as the obligations arising between the procurator and the partnership or the company related to the performance of duties by the procurator,
- b) between the founders of a co-operative as well as between a member and his co-operative, as regards relations concerning participation on the co-operative and relations arising from agreements on transfer of ownership interest, and relations between the member of a statutory body and a supervisory body of the co-operative and relations between the procurator and the co-operative arising out of the performance of his duties,
- c) ensuing from stock exchange deals and brokerage contracts (Section 642 below), and also ensuing from contracts against payment concerning the securities,
- d) from a contract for the sale of an enterprise or its parts (Section 476 below), a credit contract (Section 497 below), a contract on inspection activities (Section 591 below), a forwarding contract (Section 601 below), a contract on the operation of transport vehicles (Section 638 below), a silent partners' contract (Section 673 below), a contract on opening a letter of credit (Section 682 below), a contract on money collection (Section 692 below), a contract on bank deposit (Section 700 below), a contract on a current account (Section 708 below) and a contract on a deposit account (Section 716 below),
- e) from a bank guarantee (Section 313 below), from a traveler's check (Section 720 below) and from the promise of indemnity (Section 725 below).

(4) This Chapter of the Code shall also govern relations ensuing from securing obligations in contractual relations which are subject to this Chapter of the Code under the preceding paragraphs, as well as mortgage rights in real estates when securing rights connected with bonds and mortgage rights in securities within the limits stipulated by a special act.

(5) The nature of participants (partners), who establish the contractual relationship, shall be decisive in applying the provisions of this Chapter of the Code under subsections 1 and 2 above.

(6) Contracts between persons specified in subsections 1 and 2 above, which are not regulated by the provisions of Chapter Two of this Act, and which are regulated as a contractual type by the Civil Code, shall be governed by the applicable provisions contained in the Civil Code, and by this Act.

**Section 262**

(1) The parties may agree in writing that their contractual relationship, which is not included in Section 261 above, shall be governed by this Act.

(2) The agreement under subsection 1 above must be in writing.

(3) This Chapter of the Code shall also apply to the relations concerning the securing of obligations ensuing from contracts, to which the parties have decided to apply this Act under subsection 1 above, if the person providing the guarantee has so agreed, or if at the time of concluding the guarantee contract the said person is aware that the obligation to be secured is subject to this Chapter of the Code.

**Section 263**

(1) The parties may deviate the provisions of this Chapter of the Code or exclude the application of certain provisions, with the exception of the following: Section 261 and Section 262 subsection 2, Sections 263 through 272, Section 273 subsection 1, Sections 276 through 289, 301, 303, 304 Section 306 subsections 2 and 3, Section 308, Section 311 subsection 1, Section 312 313, Section 321 subsection 4, Sections 324, 341, 365, 370, 371, 376, 382, 384, Sections 386 through 408, Section 408a, Sections 444, 458, 459, 477, 478, Section 479 subsection 2, Section 480, Section 481, Section 483 subsection 3, Sections 493, 499, Section 509 subsection 1, Sections 592, 597, Section 655 subsection 1, Section 655a, Section 660 subsections 2 through 4, Section 668 subsection 3, Sections 668a, 669, 669a, 672a, 675, Section 676 subsections 1 and 2, 711, 720, 725, 729 and 743 below.

(2) The parties shall not be allowed to depart from fundamental provisions contained in this Chapter with respect to the individual types of contracts, and from those provisions, which prescribe written form for specific actions at law.

**Section 264**

(1) Common business practices, generally observed in the particular line of business, unless contradicting the contents of the contract or law, shall also be taken into account when determining the rights and duties ensuing from a certain contractual relationship.

(2) Common business practices, which shall be taken into account in accordance with the contract, shall take precedence over those provisions of this Act not having a mandatory character.

**Section 265**

The exercise of rights, which are at variance with the principles of fair business conduct, shall

not be legally protected.

## **PART II SOME PROVISIONS ON LEGAL ACTS**

### **Section 266**

- (1) The manifestation of will shall be interpreted according to the intention of the acting person, if this intention was known or must have been known to the party, to which the manifestation of will was directed.
- (2) In the event that it is impossible to interpret the manifestation of will under subsection 1 above, the manifestation of will shall be interpreted according to the meaning, which - as a rule - is assigned to it by a person of the same status as the status of the person, to which the manifestation of will was directed. The terms, used in business, shall be interpreted according to the meaning which business circles usually attribute to them.
- (3) All circumstances, which are associated with the manifestation of will, including the negotiations about the contract and practice, which the parties introduced between themselves, as well as the subsequent conduct of the parties, shall be duly considered when interpreting the manifestation of will under subsection 1 and subsection 2 above.
- (4) The manifestation of will, which includes terms (expressions), which may lead to different interpretations, shall, if in doubt, be interpreted to the disadvantage of the party, which used the said terms in negotiations first.
- (5) In the event that, in accordance with this Chapter of the Code, the decisive factor is to be the registered office, the place of business, the location of a factory or its branch, or the residence of a contracting party, then it shall be decisive which place is stated in the contract, until the other party is notified of the change.

### **Section 267**

- (1) If the non-validity of a legal act is stipulated to protect a certain participant (party), then only this participant (party) may claim this non-validity. The above shall not apply to agreements entered into in pursuance of Title II of this Act.
- (2) The provisions of the Civil Code's Section 49 shall not apply to the relationships governed by this Act.
- (3) Should an otherwise void contract include an agreement on the choice of law or this Act (Section 262 above), or an agreement on resolving a dispute between the contracting parties, then these agreements shall be void only in the event that the grounds for non-validity apply to them as well. On the contrary, non-validity of these agreements shall not apply to the non-validity of contract whose part they form.

### **Section 268**

The person, who caused the non-validity of a certain legal act, shall be liable to compensate the damage done to the party, to which the legal act was directed, unless the said party was aware of the non validity of the legal act. The provisions on compensation for damage, incurred by the breach of a contract (Section 373 et seq. below), shall apply *per analogiam*.

## **PART III SOME PROVISIONS ON THE CONCLUSION OF A CONTRACT**

## **1 NEGOTIATIONS ON THE CONCLUSION OF A CONTRACT**

### **Section 269**

- (1) The provisions, which in Chapter Two of this Act regulate individual types of contracts, shall also apply to a contract, whose contents shall be agreed by the contracting parties and shall include substantial parts of one of the contracts stipulated in the fundamental provisions for each one of such contracts.
- (2) Parties may conclude even such a contract, which is not regulated as a certain type. However, should the parties not sufficiently identify the subject matter of their obligations, then the contract shall be deemed void.
- (3) Parties may also agree that a certain part of a contract shall be substituted by the parties' agreement on a procedure, which would enable the subsequent specification of the subject-matter of the contract, if this procedure does not depend on the will of only one party. Should the missing part of the contract be specified by a court, or by a certain person, the agreement must be in writing, and Section 291 below shall apply *per analogiam*.

### **Section 270**

- (1) An agreement made at the conclusion of a contract may provide that a certain non-essential part of the contract be approved after the contract has been concluded. This missing part shall be deemed a condition of validity of the concluded contract, unless the parties made it entirely clear prior to the conclusion of the said contract, that subsequent non-agreement about the missing part shall have no effect on the validity of the concluded contract.
- (2) Should the parties agree in writing - with regard to the missing subject-matter of the contract (subsection 1 above) - that this missing part shall be specified by a court or by a person stipulated in the agreement, then the provisions of Section 291 below shall apply. The agreed-upon part of the contract shall not take effect until the missing part is also agreed upon or determined, the validity of the agreed-upon part of the contract shall be nullified when the time-limit for agreeing on the missing part expires (Section 292 subsections 4 and 5 below), unless the parties have agreed that the concluded part of the contract shall remain valid.

### **Section 271**

Should the parties mutually exchange confidential information when negotiating a contract, then no party, to which such information was provided, may disclose such information to a third person or use it at variance with its purpose for its own needs, regardless of whether the contract is concluded or not. The person, who breaches this duty, shall be liable for damage, and the provisions of Section 373 et seq. below shall apply *per analogiam*.

### **Section 272**

- (1) The contract must be in writing in order to be valid only in instances stipulated by this Act, or if at least one party negotiating the conclusion of a contract requests the need for the contract to be in writing.
- (2) Should a certain contract, which has been concluded in writing, include provisions stipulating that the contract may be amended or terminated by an agreement of the parties in writing, then the contract may be amended or terminated only in writing.

#### **Section 273**

- (1) A certain part of the contents of the contract may be specified by reference to general commercial clauses (terms, conditions), which have been worked out by expert organizations or societies, or by reference to other commercial rules, which are known to the contracting parties or are attached to the contract.
- (2) The different provisions stipulated in the contract shall have priority over the wording of the commercial rules, mentioned in subsection 1 above.
- (3) It shall be possible to make use of printed contract documentation for the conclusion of a contract.

#### **Section 274**

Should the contracting parties include in the contract some clauses (terms), stipulated in commonly-known rules, it shall be presumed that the parties intended for the clauses (terms) to have such legal effects as stipulated in the rules referred to in the contract, otherwise in the rules which are usually applied in a contract of such nature.

#### **Section 275**

- (1) Should several contracts be concluded during the same negotiations, or included into one deed, then each of these contracts shall be considered separately.
- (2) Should it be obvious when concluding the contracts mentioned in subsection 1 above, that - due to their nature or due to their purpose (known to the contracting parties) - these contracts are mutually interdependent, then the conclusion of each of those contracts shall be a condition for the conclusion of the other contracts. The discharge of any of the contracts, other than by performance, shall result in the discharge of the other dependent contracts with similar legal effects.
- (3) The provisions of subsection 2 above shall apply *per analogiam* if the nature or the purpose of such contracts imply that only one or a few of these contracts are dependent one on another.
- (4) With regard to the subject of a proposal to conclude a contract (i.e. offer) or with regard to the practice which the parties have introduced in their mutual conduct, or with regard to the common practices relevant under this Act, the person to whom the offer is directed may express approval by performing an activity (e.g. the dispatch of goods or the payment of a purchase price) without advising the other party. In this event the acceptance of the offer is deemed to be effective as from the moment of the performing of the activity as long as it occurred prior to the time limit, determining the acceptance of the offer.

## **2**

### **PUBLIC OFFER AND ITS EFFECTS**

#### **Section 276**

- (1) The manifestation of will, displayed by an offering party towards unspecified persons in order to conclude a contract, shall be deemed a public offer to conclude a contract (hereinafter referred to only as a „public offer“), if its subject-matter corresponds to Section 269 above.
- (2) An initiative concerning the conclusion of a contract, if lacking the particulars stipulated in subsection 1 above, shall be deemed to be a mere invitation to make an offer.

#### **Section 277**

A public offer may be revoked if the offering party (offeror) announces its revocation prior to the acceptance of a public offer, and the announcement is made in the same manner as the announcement of the public offer.

#### **Section 278**

On the basis of a public offer, a contract shall be concluded with a person who, in accordance with the subject of the public offer and within the stipulated time-limit, otherwise within an appropriate term, is the first to inform the offeror of the acceptance of that offer, and the offeror confirms the conclusion of the contract to this offeree. Should several persons accept a public offer at the same time, then the offeror may select the person with whom the contract shall be concluded.

#### **Section 279**

- (1) The offering party (offeror) shall be obliged to confirm the acceptance of the contract to the offeree without undue delay following receipt of the offer under Section 278 above.
- (2) Should the offeror confirm the conclusion of the contract to the offeree later than stipulated in subsection 1 above, than the contract shall not be concluded in the event that the offeree rejects the conclusion of the contract and notifies the offeror accordingly without undue delay after having received the overdue confirmation from the offeror.

#### **Section 280**

Should the public offer so expressly stipulate, the contract shall be concluded with all persons who have accepted the public offer within the given time limit.

## **3**

### **PUBLIC TENDER**

#### **Section 281**

A party which announces a public tender invites unspecified persons to submit the most advantageous bid to conclude a certain contract, thus presenting an invitation for the submission of offers (proposals to conclude a certain contract).

#### **Section 282**

- (1) An announcement of a tender shall have include the contents of the required obligation in a general manner in writing, the principles of the other mandatory parts of the envisaged contract, the procedure for submitting bids, the time-limit by which bids may be submitted, and the term for announcing which bid has been chosen (hereinafter referred to only as „the conditions of a tender“).
- (2) The contents of the conditions of a tender must be published in the appropriate manner.

#### **Section 283**

The party advertising the conditions of a tender may neither amend the published conditions, nor cancel the tender, unless this right has been reserved in the published conditions of the said tender, and the amendment or cancellation is published in the same manner that the conditions of the said tender were previously published.

#### **Section 284**

- (1) A bid may only be included in the tender if the subject of the bid corresponds to the published conditions of the tender. The bid may deviate from the published conditions only within the extent permitted by the conditions of the tender.
- (2) No bid submitted after the time limit stipulated in the conditions of the tender shall be considered.
- (3) Parties that submit tenders shall be entitled to claim expenses connected with their participation in the tender, only if the conditions of the said tender have stipulated this entitlement.

#### **Section 285**

- (1) It shall not be permitted to withdraw a submitted bid after the time limit stipulated in the conditions of a certain tender, unless the conditions of the tender so permit. The conditions of the tender may stipulate that no bid may be withdrawn once submitted.
- (2) The bid may be amended or supplemented only within the time-limit within which (under subsection 1 above) a bid may be withdrawn, unless the correction of typing (and similar) mistakes is required and the conditions of the tender do not rule out such corrections. A bid may be amended or supplemented if the conditions of the tender so permit.

#### **Section 286**

- (1) The party, which has invited the bids, shall select the most suitable bid from those submitted, and shall indicate its acceptance in the manner and within the time-limit stipulated in the conditions of the tender.
- (2) Should the conditions of the tender not stipulate a procedure for choosing the most suitable bid, then it shall be left to the party which has asked for the submission of bids to choose the one which is most appropriate for this party.

#### **Section 287**

- (1) The party, which has asked for the submission of bids, shall be bound to accept the bid chosen according to the procedure specified in Section 286 above. Should the said party advise its acceptance of the chosen bid only after the deadline stipulated in the conditions of the tender, the contract shall not be concluded if the chosen tenderer advises the said party of the refusal to conclude the contract without undue delay - after having received from the said party the overdue confirmation regarding the proposed conclusion of the contract.
- (2) The party which has advertised with the intent of seeking the submission of bids shall be entitled to refuse all submitted bids if this right has been reserved in the conditions of the tender.

#### **Section 288**

The party, which has sought the submission of bids, shall notify all participants whose bids were rejected without undue delay and advise them accordingly.

### **PART IV AN AGREEMENT TO CONCLUDE A FUTURE CONTRACT**

#### **Section 289 FUNDAMENTAL PROVISIONS**

- (1) A pledge to conclude a future contract shall bind one or both parties to conclude, within a certain time, a contract whose subject-matter shall be at least generally specified.
- (2) The said pledge must be in writing.

#### **Section 290**

- (1) The party obligated to conclude such a contract, must do so without undue delay after having been invited to do so by the entitled party, in accordance with a written pledge on the conclusion of a future contract.
- (2) Should the obligated party fail to conclude the contract under subsection 1 above, then the entitled party may demand that the subject be specified either by a court, or by a person designated in the written pledge, or the entitled party may claim damages caused by the breach of the obligation to conclude the said contract. The entitled party may claim damages as well as demand that the subject matter of the contract be specified only in the event that the other party has unjustifiably refused to negotiate the contract.

#### **Section 291**

The provisions of Section 290 above and 292 subsections 1 and 2 below shall apply, *mutatis mutandis*, to the subject of a written agreement of the parties which stipulates that an already concluded contract shall be supplemented by certain issues, if - according to the said agreement - some missing part of the concluded contract is to be specified by a court or another person, determined by the contracting parties, in the event that the parties themselves fail to agree on such issues. The obligation to supplement the missing part of the subject of the said concluded contract may be assumed by one or both parties, if in doubt, it shall be presumed that this obligation is applicable to both parties.

#### **Section 292**

- (1) The subject of a future contract shall be specified according to the purpose obviously pursued, taking into account both the circumstances under which a pledge for the conclusion of the future contract was agreed upon, and the principles of fair business conduct.
- (2) The right to specify the subject of a future contract using a court or a person stipulated to do so in a pledge, and the entitlement to compensation for damage under Section 290 subsection 2 above, shall expire one year from the day on which the entitled party has asked the liable party to conclude the contract under Section 290 subsection 1 above, unless a pledge about the conclusion of a future contract has stipulated a different time-limit. The agreed-upon time limit may, however, not exceed the prescription period ensuing from Section 391 below and the following Sections of this Act.
- (3) The obligation to conclude a future contract shall be extinguished if the entitled party fails to invite the liable party to perform this obligation within the time-limit determined in the written pledge concerning the conclusion of a future contract.
- (4) The obligation to supplement the missing part of a contract shall be extinguished if the entitled party fails to invite the liable party to perform this obligation within the time-limit stipulated in the agreement on supplementing the subject of the contract (Section 291 above), otherwise, within one year from the conclusion of this agreement.
- (5) The obligation to conclude a future contract or to supplement missing parts of a contract shall also be terminated if the circumstances, which the parties took into account when establishing the obligation, changed to such an extent that the liable party cannot be reasonably required to



conclude the contract. However, the termination shall only occur if the liable party has advised the entitled party of the change in circumstances without undue delay.

## **PART V JOINT OBLIGATIONS AND JOINT RIGHTS**

### **Section 293**

Should several persons be bound to the same performance, then in the event of doubt, it shall be presumed that they are bound to perform jointly and severally. The creditor may require the performance from any one of these persons but shall be obliged to accept the performance offered by another joint debtor.

### **Section 294**

Should a contract, or the nature of an obligation, imply that the debtors are not liable to the same performance jointly and severally, then each co-debtor shall be liable only to the extent of each co-debtor's share. If in doubt, it shall be presumed that the co-debtors are equally liable.

### **Section 295**

If several persons take over an obligation from whose nature it ensues that it may be performed only jointly by all the co-debtors, then the co-debtors shall be obliged to fulfil the obligation jointly.

### **Section 296**

Should a debtor have concurrent obligations towards several creditors for indivisible performance, then any one of these creditors may require the said performance - unless the law or the contract implies otherwise.

## **PART VI SECURING AN OBLIGATION**

### **1**

#### **MORTGAGE**

### **Section 297**

*omitted (Act 58/1996 Coll.)*

### **Section 298**

*omitted (Act 58/1996 Coll.)*

### **Section 299**

*Rescinded by the Act 526/2002 Coll.*

### **2**

#### **SOME PROVISIONS ON CONVENTIONAL FINE**

### **Section 300**

Circumstance excluding responsibility (Section 374 below) shall have no bearing on the duty to pay a conventional fine.

### **Section 301**

A disproportionately high conventional fine may be reduced by a court to the amount of the damage caused by breaching the contractual duty prior to the court ruling, the court - when assessing such a matter - shall consider the amount and the significance of the breached duty. The injured party shall be entitled to compensation up to the amount of the conventional fine under Section 373 et seq. below.

### **Section 302**

The repudiation of a contract shall have no effect on a claim concerning the payment of a conventional fine.

## **3 SURETYSHIP**

### **Section 303**

A person, who confirms in writing to honor a creditor if a certain debtor fails to perform a certain obligation, shall become the debtor's surety (guarantor).

### **Section 304**

(1) A suretyship shall only cover a valid obligation or part of such an obligation of a certain debtor. The establishment of a suretyship shall not be impaired if the obligation of a debtor is void only due to the debtor's insufficient capacity to assume the obligation, if the surety was aware of this fact when declaring the suretyship.

(2) A suretyship may also cover a future or conditional obligation.

### **Section 305**

The creditor shall be obliged to inform the surety of the amount of a debtor's debt, secured by the said surety, without undue delay.

### **Section 306**

(1) The creditor shall be entitled to demand the performance of the obligation from the surety (guarantor) only if the debtor has not fulfilled a due obligation within an appropriate time after the creditor has invited the debtor in writing to do so. Such an invitation shall be unnecessary if the creditor cannot implement it, or if it is certain that the debtor cannot perform the obligation, in particular when under a bankruptcy order.

(2) The surety may raise against the creditor all objections which may be claimed by the debtor and include all the debtor's claims against the creditor which the debtor could justifiably include if the creditor raised the claim against the debtor. The surety may also include own claims against the creditor.

(3) Should the surety raise (against the creditor) unsuccessful objections, and these objections are proposed by the debtor, then the debtor shall be obliged to refund the incurred expenses to the surety.

### **Section 307**

(1) If several persons provide surety for the same obligation, then each of them shall be liable to the creditor for the entire debt. A surety shall have the same rights towards his co-sureties as a co-debtor.

(2) Should a suretyship cover an obligation only partly, the extent of the suretyship shall not be

reduced by partial fulfillment, if the remaining unfulfilled part of the obligation amounts to the sum, which is secured by such a suretyship.

(3) In the event of transferring a claim, secured by a surety, the rights ensuing from the surety shall be passed from the assignor to the assignee at the time when the surety is informed of the assignment in question.

#### **Section 308**

A surety, who has performed his obligation covered by the surety, shall thus assume the rights of the creditor against the debtor and shall be entitled to demand all documentation, which the creditor holds. and which shall be required to claim the rights against the debtor.

#### **Section 309**

In the event that a surety satisfies the creditor without the knowledge of the debtor, the debtor may raise against the surety all the objections, which could have been raised against the creditor, if the creditor had demanded the performance of the obligation. The debtor cannot raise such objections against the surety if the surety was not informed by the debtor without undue delay, following the debtor's receipt of a notification advising that the creditor claimed the rights ensuing from the suretyship.

#### **Section 310**

The creditor's right against the surety shall not expire prior to the expiry of the creditor's right against the debtor.

#### **Section 311**

(1) A suretyship shall terminate upon ceasing of the obligation covered by the said suretyship.  
(2) A suretyship shall not terminate upon ceasing of the obligation due to the debtor's incapacity to perform the obligation, while the obligation may be performed by the surety, or on the winding-up of a legal entity being a debtor.

#### **Section 312**

The provisions of Section 305 - Section 311 above shall apply, *mutatis mutandis*, to suretyship ensuing from law.

### **4**

## **A BANK GUARANTEE**

#### **Section 313**

### **FUNDAMENTAL PROVISIONS**

A bank guarantee shall be a written undertaking of a bank in a letter of guarantee, stating that the bank shall satisfy a creditor up to the amount of a certain sum stated in the letter of guarantee, if a third party (debtor) fails to fulfil a certain obligation, and if other conditions stipulated in the letter of guarantee are met.

#### **Section 314**

Should a non-pecuniary claim be secured by a bank guarantee, it shall be presumed that the pecuniary entitlement of the creditor against the debtor is secured up to the amount stipulated in

the letter of guarantee in the event that the debtor breaches the obligation, whose performance is secured by the bank guarantee.

#### **Section 315**

(1) If a bank guarantee is confirmed by another bank, the creditor may submit the claim under the bank guarantee to any of these banks.

(2) If a bank, which confirmed a certain bank guarantee, provided fulfillment on the basis of this guarantee, the bank shall have the right to claim such performance from the bank that had asked it for the confirmation of its bank guarantee.

(3) If a bank only announces that another bank has provided a bank guarantee, then no liability from the guarantee shall ensue to the announcing bank. The bank, which has made the announcement, shall be liable only for the damage arising from the non-validity of such an announcement.

#### **Section 316**

(1) The bank shall be liable for the performance of the secured obligation up to the amount stipulated in the letter of guarantee. The bank may raise against the creditor only such objections, which are permissible under the letter of guarantee.

(2) The partial fulfillment of the obligation by the debtor shall have no effect on the bank guarantee if the unfulfilled part of the obligation is of the same - or, of a higher amount than the amount stated in the bank guarantee.

#### **Section 317**

(1) Unless the letter of guarantee implies otherwise, the bank cannot raise objections, which the debtor would be entitled to raise against the creditor. The bank is bound to fulfil its obligations when the creditor requests the bank - in writing - to do so. The preceding invitation to the debtor asking him to fulfil the obligation shall be required only if the letter of guarantee so stipulates.

#### **Section 318**

If, under the letter of guarantee, the creditor is entitled to claim the rights from the bank guarantee only when the debtor fails to fulfil the obligation, then the creditor may assign the rights ensuing from the bank guarantee only with the assignment of the claim secured by the bank guarantee.

#### **Section 319**

The bank shall fulfil its obligation from the bank guarantee only if invited by the creditor in writing to do so. If the bank's performance, ensuing from the bank guarantee, is dependent on the submission of certain documents specified in the bank guarantee, then the specified documents must be submitted when the bank is invited to perform, or without undue delay afterwards.

#### **Section 320**

(1) In the event that the validity of a bank guarantee is limited in time, the bank guarantee shall be terminated, unless the creditor notifies the bank of the claim in writing within the validity of the bank guarantee.

(2) The debtor shall be obliged to pay the bank the amount which the bank paid under its duty ensuing from the letter of guarantee, issued in accordance with the contract concluded with the

debtor.

(3) The debtor cannot raise against the bank such objections, which he could raise against the creditor, unless the contract between the bank and the debtor stipulated the bank's duty to include the raising of these objections against the creditor in the letter of guarantee.

(4) If the creditor has received fulfillment under a bank guarantee without the entitlement against the debtor, then the creditor shall return this fulfillment to the debtor, and shall compensate the debtor for any incurred damages.

#### **Section 321**

(1) In the event that the validity of a bank guarantee is limited in time, the bank guarantee shall be terminated, unless the creditor notifies the bank of the claim in writing within the validity of the bank guarantee.

(2) The debtor shall be obliged to pay the bank the amount which the bank paid under its duty ensuing from the letter of guarantee, issued in accordance with the contract concluded with the debtor.

(3) The debtor cannot raise against the bank such objections, which he could raise against the creditor, unless the contract between the bank and the debtor stipulated the bank's duty to include the raising of these objections against the creditor in the letter of guarantee.

(4) If the creditor has received fulfillment under a bank guarantee without the entitlement against the debtor, then the creditor shall return this fulfillment to the debtor, and shall compensate the debtor for any incurred damages.

#### **Section 322**

(1) The provisions on suretyship shall appropriately apply to the bank guarantee.

(2) The relationship between the bank and the debtor shall be subject to the provisions on mandates.

### **5**

## **RECOGNITION OF AN OBLIGATION**

#### **Section 323**

(1) Should a person recognize an obligation in writing, it shall be presumed that this obligation continues to exist at the time of its recognition. These effects shall apply even in the event that the creditor's claim had already expired at the time of its recognition.

(2) Legal acts referred to in Section 407 subsections 2 and 3 below shall be considered for the recognition of an existing obligation.

(3) The recognition of an obligation shall also have effects against the guarantor.

## **PART VII**

### **DISCHARGE OF AN OBLIGATION BY PERFORMANCE**

#### **1**

### **MANNER OF PERFORMANCE**

#### **Section 324**

(1) An obligation shall become extinguished when performed duly and in time.

(2) An obligation shall also become extinguished by a debtor's late performance unless prior to such a performance the obligation already became extinguished by a creditor's repudiation of the contract.

(3) In the event that the debtor provides faulty (unsatisfactory) performance and the creditor is not entitled to repudiate the contract or fails to exercise this right, the contents of the obligation shall be modified in a manner which corresponds to become discharged upon its satisfaction.

(4) The provisions of subsections 2 and 3 above shall not apply to claims for damages and conventional fines.

#### **Section 325**

In the event that the parties have reciprocal obligations, the performance may only be demanded by the party, which has already rendered performance or is ready and capable to do so concurrently with the other party, unless the contract, the law or the nature of some obligation implies otherwise.

#### **Section 326**

(1) In the event that one party is bound to perform prior to the other party's performance, the first party may refuse its performance until the other party provides or sufficiently secures its performance, if after the conclusion of a contract it is obvious that the other party will fail to perform due to insufficient capability to do so, or with regard to that party's behavior in preparation of the performance.

(2) In the instances mentioned in subsection 1 above, the entitled party may stipulate an appropriate time limit for the other party's subsequent performance and during this period the contract cannot be repudiated. The party may repudiate the contract without providing an additional time limit if the other party is under a bankruptcy order.

(3) Unless the provisions of subsections 1 and 2 above imply otherwise, neither one of the parties shall be entitled to refuse performance or to repudiate the contract on the grounds that the other party's obligations arising from another contract have not been performed duly or in time.

#### **Section 327**

(1) In the event that an obligation may be performed in several ways, the debtor shall be entitled to determine the manner of performance, unless the contract implies that this shall be the creditor's right. Should the creditor fail to determine the manner of performance within the time limit stipulated in the contract, otherwise within the time limit stipulated for the performance, then the debtor may determine the manner of performance.

(2) In the event that on the basis of either the debtor's or the creditor's rights (whichever one of them is entitled) the entitled party selects the manner of performance and informs the other party accordingly, then this manner cannot be changed without the other party's consent.

#### **Section 328**

If the subject matter of the performance is specified according to the kind, the debtor shall be bound to deliver to the creditor such a thing, which is suitable for the purpose for which the thing of the same kind is usually used on the basis of similar contracts.

#### **Section 329**

The creditor may be bound to accept only part of the performance unless such partial

performance is contrary to the nature of the obligation or the economic purpose pursued by the creditor at the time of the conclusion of the contract, and if this purpose is stated in the contract or was known to the debtor at the time of the conclusion of the contract.

#### **Section 330**

(1) In the event that multiple obligations are to be fulfilled by the same debtor to one creditor, and the rendered performance is insufficient to meet all the obligations, then at the time of performance the debtor shall determine to which obligation the rendered performance is related. Unless the debtor determines which obligation is fulfilled, then it shall be the obligation first falling due, starting with appurtenances.

(2) When performing payment obligation, the payment shall be first calculated for paying the interest and then for the debt, unless the debtor specifies otherwise.

(3) In the event that the debtor has multiple payment obligations towards one creditor and the debtor fails to specify which obligation is to be satisfied when rendering the performance, then the payment shall be counted towards the obligation which is unsecured or least secured, otherwise towards the obligation, whichever falls due first.

(4) Payment shall be considered as compensation for some damage only after fulfilling the payment obligation from whose breach the duty to pay the damages ensued, unless the debtor specifies another purpose of the payment.

#### **Section 331**

Should the debtor render performance through another person, the debtor shall be liable for this person's performance as if the performance was rendered by the debtor, unless this Act provides otherwise.

#### **Section 332**

(1) In the event that the fulfillment of an obligation is not dependent on the personal characteristics of the debtor, the creditor shall be obliged to accept the performance of such an obligation offered by a third person, provided that the debtor agrees to this. The consent of the debtor shall be unnecessary if a third person secures the said obligation or its performance and the debtor has breached the obligation in question.

(2) Unless the legal relationship between the debtor and a third party implies otherwise, the third party shall succeed the creditor in the relationship towards the debtor on satisfying the obligation on the debtor's behalf (subrogation), the creditor shall be obliged to pass to this third party all evidence concerning the said obligation.

#### **Section 333**

(1) In the event that the performance of the obligation is taken over directly by the creditor, the debtor is entitled to demand from the creditor a receipt describing the subject and extent of the rendered performance and to refuse the rendering of such performance without being given a receipt.

(2) In the event that the debtor renders performance to a person who provides a creditor's confirmation that the obligation has been performed (and accepted), then it shall have the same effect as if rendered directly to the creditor.

#### **Section 334**

The opening of a letter of credit and the drawing of a bill of exchange or a check with which a certain payment obligation under a certain contract is to be performed, shall not affect the duration of that payment obligation. However, the creditor shall be entitled to demand the performance of the payment obligation under the contract only when the obligation cannot be performed through the letter of credit, bill of exchange or check.

## **2**

### **PLACE OF PERFORMANCE**

#### **Section 335**

The proper rendering of performance requires that it be carried out at a defined location.

#### **Section 336**

In the event that the place where the performance is to be rendered is not set forth in the contract and nothing else in this regard is apparent from the nature of the obligation, the debtor shall be obliged to render performance at the place of his own registered office, the place of business, or the residence at the time that the contract is concluded. If the obligation is connected in any way with the running of a factory or with other business premises, the debtor shall be obliged to render the performance at the place where that factory or business is located.

#### **Section 337**

(1) A payment obligation shall be performed at the debtor's own risk and costs, and at the creditor's registered office or the place of business, or the residence, unless the contract or this Act provides otherwise.

(2) In the event that the creditor changes the registered office or the place of business, or the residence after the conclusion of the contract, the creditor shall bear the increased expenses and risks connected with the payment of the payment obligation incurred to the debtor.

#### **Section 338**

In the event that a payment obligation arises in connection with the running of a creditor's factory or business, the debtor shall be obliged to perform the obligation at that factory or the business premises concerned if the obligation is to be performed concurrently with the performance of the other party at the said factory or premises.

#### **Section 339**

(1) The payment obligation can be deposited into the creditor's bank account, unless it contradicts the payment terms agreed by the contracting parties.

(2) A payment obligation paid through a bank or through a post office shall be performed at the time, when the amount due is credited to the creditor's bank account, or if the amount due is paid to the creditor in cash, unless special act provides otherwise, or unless otherwise agreed between the debtor and the creditor.

## **3**

### **TIME OF PERFORMANCE**

#### **Section 340**

- (1) The debtor shall be bound to perform the obligation at the time set forth in the contract.
- (2) In the event that the contract fails to define the time that the obligation is to be performed, the creditor shall be entitled to require that the obligation be performed immediately after the contract is concluded, and the debtor shall be obliged to perform the obligation without undue delay after the creditor's request that he do so.

#### **Section 341**

In the event that, under the contract, the debtor is entitled to define when the obligation is to be performed, and fails to do so in an appropriate period of time, a court shall determine the term for the performance of the obligation based on the creditor's proposal with regard to the nature of the obligation, the place of its performance, and with regard to the reason why the term of performance was originally to be set by the debtor.

#### **Section 342**

- (1) Unless the contract or the provisions of this Act provide otherwise, those parties' intentions which were made apparent at the time of the contract's conclusion, as well as the nature of the obligation to be performed, shall be decisive in determining whether the term for the performance of the obligation benefits both parties or only one.
- (2) In the event that the term benefits the debtor, the creditor shall not be entitled to demand the performance of the obligation prior to the agreed deadline but the debtor may perform the obligation prior to this deadline.
- (3) In the event that the term benefits the creditor, the creditor is entitled to demand the performance of the obligation prior to the end of the term but the debtor is not entitled to perform the obligation prior to the agreed term.
- (4) In the event that the term benefits both parties, neither the creditor is entitled to demand the performance of the obligation, nor the debtor is entitled to perform the obligation prior to the agreed term.

#### **Section 343**

In the event that the debtor performs a payment obligation prior to the agreed term, the debtor is not entitled - without the creditor's consent - to deduct the amount corresponding to the interest from the sum in arrears for the period by which the obligation was to be performed earlier.

### **PART VIII**

#### **NON-PERFORMANCE OF AN OBLIGATION AND CONSEQUENCES**

##### **1**

#### **REPUDIATION OF CONTRACT**

#### **Section 344**

A contract may be repudiated only in instances stipulated by the contract or by this Act or by a special act.

#### **Section 345**

- (1) In the event that a debtor's performance (Section 346 below) or a creditor's performance (Section 370 below) is overdue, and constitute a breach of a fundamental contractual obligation,

the other party is entitled to repudiate the contract provided that after having learned of such a breach, it informs the delinquent party without undue delay.

- (2) For the purposes of this Act, a breach shall be deemed fundamental if the party breaching the contract knew or could have anticipated at the time of its conclusion from the contents of the contract or the circumstances under which it was concluded, that the other party would not be interested in the performance in the event of a breach of the contract. If in doubt, it shall be presumed that the breach of the contract is non-fundamental.

- (3) If the party which is entitled to demand the fulfillment of a contractual obligation from the other party, advises the other party that it insists on the fulfillment of this contractual obligation, and if the entitled party fails to claim in time its right to repudiate the contract under subsection 1 above, the entitled party shall have the right to repudiate the contract only under the procedure stipulated for the non-fundamental breach of a contractual obligation. In the event that the entitled party sets an additional period for the performance, it shall have the right to repudiate the contract only after the expiration of this period.

#### **Section 346**

- (1) In the event that a debtor's or a creditor's delay constitutes a non-fundamental breach of a contractual obligation, the other party may repudiate the contract only in the case that the delaying party fails to perform its obligation even within an additional reasonable period which has been provided for such performance.
- (2) If the delaying party declares that it will not perform the obligation, the other party may repudiate the contract without providing an additional reasonable period for such performance, or may repudiate the contract prior to the expiration of this period.

#### **Section 347**

- (1) Should either a debtor's delay or a creditor's delay concern only part of an obligation, the other party shall be entitled to repudiate only that part of the contract which concerns this non-rendered part.
- (2) As regards contracts with gradual partial fulfillment, it shall only be possible to repudiate that contractual partial fulfillment with which the debtor is in delay.
- (3) It shall be possible to repudiate that part of a contract related to the part of a fulfillment which has already been accepted or is to occur only in the future, if the said partial fulfillment is non-essential owing to its nature, and has no economic value for the entitled party without the remaining performance, which is in delay, or if non-performance of the entire obligation constitutes a substantial breach of the contract.

#### **Section 348**

- (1) It shall be possible to repudiate a contract involving an obligation for future performance if it is obvious from the behavior of the party which is to render performance, or if it clearly ensues from other circumstances prior to the period set for the performance, that the said party is going to substantially breach its contractual obligation and shall not provide sufficient assurance of its performance without undue delay when requested to do so by the entitled party.
- (2) It shall also be possible to repudiate a contract involving an obligation for a future performance if the party, which is to render such a performance, declares that it will not render the performance.

#### **Section 349**

(1) The contract shall be terminated by its repudiation in accordance with this Act, when the entitled party's manifestation of will as regards the repudiation of the contract is notified to the other party, following such a notification, it shall be impossible to recall or change the effects of the repudiation without the consent of the other party.

(2) The entitled party cannot repudiate the contract after being informed that the obligation, whose breach constituted a reason for the repudiation of the contract, has been performed.

(3) Should the contract imply that the creditor is not interested in the performance of a certain obligation after the period set for its fulfillment, the effects of the repudiation of the contract shall begin when the debtor starts to be in default, unless prior to the expiration of the contractual term these creditor advises the debtor that he insists on the performance.

### **Section 350**

(1) Should an additional period provided for performance be inadequate, and the entitled party repudiate the contract on its expiration, or should the entitled party repudiate the contract without granting an additional period for performance, the effects of the repudiation of the contract shall begin only after the expiration of an additional reasonable period - which should have been granted for the performance - but during which the said performance did not occur.

(2) The entitled party may declare - when granting an additional period for performance - that it shall repudiate the contract if the other party fails to perform within the said additional period. In this event, the effects of the repudiation of the contract shall begin on the expiration of the said period if the said performance did not occur - if the period was adequate, otherwise, on the expiration of a reasonable period if the originally set period was inadequate.

### **Section 351**

(1) All the rights and obligations arising from the contract shall be extinguished on the repudiation of the contract. The repudiation of the contract shall, however, not affect claims for damages (arising from the breach of the contract), the provisions concerning the choice of law or this Act under Section 262 above, the settling of disputes between the contracting parties and other provisions, which, according to the manifestation of will of the parties, shall apply even after the contract's termination.

(2) The party, to which performance was rendered prior to the repudiation of the contract, shall return such performance, in the case of a payment obligation, together with interest agreed for such an event, otherwise, under Section 502 below. The party, which has repudiated the contract and returns performance, shall be entitled to reimbursement of expenses connected herewith.

## **2**

### **SUBSEQUENT IMPOSSIBILITY OF PERFORMANCE**

#### **Section 352**

(1) The performance of an obligation shall also be deemed attainable if it may be attained by means of another person.

(2) The performance of an obligation shall be deemed unattainable if legal regulations which were passed after the conclusion of the contract and which have an unlimited time validity, prohibit such conduct which the debtor is bound to perform under the concluded contract, or stipulate that a certain license is required - which, however, was not granted to the debtor although he duly applied for it.

(3) A creditor may also repudiate that part of the contract, the performance of which is attainable, if this part - owing to the nature or the purpose of the contract stated therein or known to the other party at the time of the conclusion of the contract - loses economic value without the remaining part of performance which has become unattainable. The same shall apply to partial fulfillment.

(4) The burden of proof as regards impossibility of performance shall rest with the debtor.

#### **Section 353**

The debtor, whose obligation was extinguished due to the impossibility of performance, shall be obliged to compensate damage hereby caused to the creditor, unless the impossibility of performance was caused by circumstances excluding responsibility (Section 374 below). The provisions of Section 373 et seq. below shall apply *per analogiam* to compensation for damage.

#### **Section 354**

The effects, referred to in Section 351 above, shall apply *per analogiam* to the ceasing of an obligation due to the impossibility of performing that obligation or its part.

## **3**

### **COMPENSATION FOR REPUDIATION**

#### **Section 355**

(1) In the event that the parties have agreed in the contract that one of them, or any of them, is entitled to repudiate the contract upon the payment of a certain amount as compensation for the repudiation of the contract, then the contract shall be extinguished from the time of its conclusion, when the entitled party notifies the other party of its applying this right and paying the compensation for repudiation of the contract. The provisions of Section 351 above shall apply, *mutatis mutandis*, to the effects of the repudiation of the contract.

(2) The entitlement under subsection 1 above shall not apply to a party, which has accepted performance or its part, or which has performed its obligation at least partially.

## **4**

### **FRUSTRATION OF THE PURPOSE OF A CONTRACT**

#### **Section 356**

(1) In the event that following the conclusion of a contract, the essential purpose of such a contract, expressly stated therein, shall be frustrated due to a substantial change of circumstances under which the contract was concluded, then the party encumbered with the frustration of the purpose of the contract may repudiate the said contract.

(2) Neither a change in the financial standing of a contracting party, nor a change in the country's economic situation, nor a change in the market conditions shall be deemed to constitute such a change of circumstances as defined in subsection 1 above.

#### **Section 357**

The party, which repudiated the contract under Section 356 above, shall be bound to compensate damage, arisen from the repudiation of the contract, to the other party. The provisions of Section 351 above shall apply, *mutatis mutandis*, to the effects of such a repudiation of the contract.

**PART IX  
SET-OFF**

**Section 358**

Only such debts, which may be asserted in courts, can be mutually set-off. The fact, that a debt (claim) is statute-barred (i.e. that the term of prescription has run out), shall not prevent its set-off if the prescription only occurred after the time when the claims became mutually applicable for being included in the set-off.

**Section 359**

A mature claim cannot be set off against an immature claim, unless it concerns a claim against a debtor who is unable to fulfil his payment obligations.

**Section 360**

A claim may also be included in the set-off when it is not due only because the maturity of the debtor's obligation has been deferred by the creditor at the debtor's request, without otherwise amending the obligation.

**Section 361**

A party, which on the basis of a contract with another party keeps the other party's current or deposit account, may utilize the pecuniary means in the account only to set off a mutual claim towards the holder of the account according to the contract concerning the keeping of such accounts.

**Section 362**

Pecuniary claims, denominated in different currencies, can only be set off if such currencies are freely convertible. The set-off shall be accomplished according to the valid median rate of exchange on the day, on which the claims became applicable for the set-off. The set-off shall be accomplished according to the rate of exchange applicable in the place of the registered office, the business, or the residence of the party that manifested the will to set off the claims.

**Section 363**

If a claim was successively assigned to several persons, the debtor may include in the set-off only such a claim, which the debtor had at the time of transfer against the first creditor, and a claim, which the debtor has against the last creditor.

**Section 364**

Any mutual claims may be included in the set-off if so agreed by the parties.

**PART X  
BREACH OF CONTRACTUAL OBLIGATIONS AND CONSEQUENCES**

**1  
DEBTOR'S DELAY**

**Section 365**

A debtor shall be in delay in fulfilling an obligation fully and in time until such an obligation is

duly performed or until such an obligation is extinguished in another manner. However, a debtor shall not be in delay, if the debtor's non-performance was due to the creditor's delay.

**Section 366**

During the debtor's delay, the creditor may insist on the proper performance of an obligation by the debtor, unless this Act provides otherwise with respect to the individual types of contracts.

**Section 367**

A creditor shall be entitled to demand - from the debtor who is in delay with the fulfillment of a certain obligation - compensation for the damage thus incurred under Section 373 et seq. below. The creditor shall be entitled to repudiate the contract under circumstances stipulated by law or the contract.

**Section 368**

(1) In the event that a debtor is in delay with the transfer or the return of a creditor's chose (thing), or in the event that a debtor disposes of a creditor's chose, which the debtor should have transferred or returned to the creditor, and such conduct is thus contradictory to the obligations arising from their contractual relationship, the risk of damage shall be transferred to the debtor for the time, for which the debtor is in delay or breaches the said obligations, unless the risk of damage was borne by the debtor previously.

(2) Under this Act, the damage of a chose shall be deemed to include the loss, destruction, damage or depreciation of the chose, regardless of the cause.

(3) The debtor shall pay compensation to the creditor for the damage of a chose if the damage occurred during the time when the risk was borne by the debtor, the debtor shall not pay any compensation to the creditor if the damage was caused by the creditor or the owner of the chose, or in the event that the damage would have occurred even if the debtor's obligation had been fulfilled. The decisive factor for the compensation shall be the depreciated value of the chose in question, taking into account its valid price at the time of the damage. Entitlement to compensation for another damage under Section 373 et seq. below shall not be hereby affected.

**Section 369**

(1) If a debtor is in delay in the settlement of its payment liability or its part, it shall be obliged to pay default interest accruing on the outstanding amount at the rate specified in the underlying contract, otherwise at a rate 10% higher than the base rate announced by the National Bank of Slovakia, which is in force prior to the first calendar day of the calendar half-year, in which the default occurred. The base rate announced by the National Bank of Slovakia, which is in force on the first calendar day of the calendar half-year, shall be used throughout the entire half-year.

(2) The default interest shall be due for payment after the expiration of the date or the term, by which the underlying payment liability is to be settled under the contract. If no date or term for the settlement of the payment liability is specified in the contract, the default interest shall be due for payment on the 30<sup>th</sup> day after:

a) the delivery of a document issued by the creditor requesting the debtor to perform its payment liability (hereinafter referred to only as "document"),

b) the delivery of the goods or services in case the date of delivery of the document above is uncertain,

c) the delivery of the goods or services in case the debtor receives the document above prior to

the receipt of the goods or the services,

d) the date, on which the take-over of the goods or the services is completed, and on which it is to be determined, whether the goods or the service comply with the terms and conditions of the contract, if so provided by the law or the contract, in case the document above is received prior to or on the date, on which the takeover is completed.

(3) The creditor shall be entitled to a compensation for damage incurred as a result of the delay in the performance of the payment liability only if such damage is not covered by default interest.

## 2

### CREDITOR'S DELAY

#### Section 370

A creditor is in delay when, contrary to the contract, the creditor fails to accept the duly rendered performance of an obligation ensuing from the contract, or when the creditor fails to co-operate with the debtor to enable the latter's performance.

#### Section 371

(1) The debtor may demand the performance of obligations from the creditor, who is in delay, unless the law stipulated otherwise.

(2) The debtor shall be entitled to demand from the creditor, who is in delay, compensation for damage under Section 373 et seq. below. The debtor may repudiate the contract only in the instances stipulated by the contract or by law.

#### Section 372

(1) In the event that the creditor fails to accept the rendered fulfillment, contrary to the contractual obligations, then the risk of damage concerning the chose in question, which the creditor has failed to accept (Section 368 subsection 2 above), shall be transferred to the creditor, if the risk had previously been borne by the debtor.

(2) In the event that the chose in question has suffered from damage during the time when the risk was borne by the creditor, the debtor shall not be bound to compensate for it or to remove it, unless the damage was caused by breach of the debtor's obligations.

## 3

### COMPENSATION FOR DAMAGE

#### Section 373

Whoever breaches an obligation arising from a certain contractual relationship shall compensate the damage thus caused, unless it is proven that the said breach was caused by the circumstances excluding responsibility.

#### Section 374

(1) An obstacle which occurs regardless of the liable party's will, and which prevents this party from performing its obligation, shall be deemed to fall under the circumstances excluding responsibility - if it cannot be reasonably presumed that the liable party could have prevented or overcome such an obstacle or its effects - and at the outset of the obligation could not have anticipated such an obstacle.

(2) An obstacle, which occurs only during the time when the liable party was in delay with the performance of its obligation, or arises from the party's financial situation, shall not exclude the party's responsibility.

(3) The effects of the circumstances excluding responsibility shall apply only to the period during which the obstacle is present, and to which such effects are related.

#### Section 375

In the event that a breach of an obligation ensuing from a contractual relationship is caused by a third party, to whom the liable party entrusted the performance of its obligation, the responsibility of the liable party shall be excluded only in the case when it is excluded under Section 374 above and when - under the same Section - the third party's responsibility was also excluded even though the third party was bound directly to the entitled party instead of to the liable party.

#### Section 376

The injured party shall not be entitled to compensation for damage if the non-performance of obligations by the liable party was caused by the conduct of the injured party itself or due to the lack of co-operation by the injured party, to which this party was bound.

#### Section 377

(1) The party which breaches its obligation or which - with regard to all circumstances - should know that it will breach its obligation ensuing from its contractual relationship, shall be bound to notify the other party of the nature of the obstacle which prevents it, or will prevent it, from performing its obligation, and of its effects. The liable party must notify the other party without undue delay after it has learned of such an obstacle, or could have learned, if all due care had been taken.

(2) In the event that the liable party fails to fulfil its obligation, or if its notification fails to be delivered to the entitled party in time, the injured party shall be entitled to compensation for the damage caused.

#### Section 378

The damage shall be compensated by the way of money, if however, the entitled party so requests, and if it is possible to common practice, then the damage shall be compensated by restitution to the former state.

#### Section 379

Unless this Act provides otherwise, the compensation shall be provided for the actual damage and for the lost profits. Compensation shall not, however, be provided for damage which exceeds the amount (damage), which the liable party envisaged or could have envisaged - as a possible result of the breach of its obligation at the outset of the contractual relationship - with regard to all the facts which the liable party knew of, or should have known of, if all due care was taken.

#### Section 380

Extra costs, which incurred to the injured party as a result of the other party's breach of obligation, shall also be deemed part of the damage.



### **Section 381**

The injured party may demand - instead of the profit actually lost- compensation for profits usually attained in fair business conduct under the conditions similar to those of the breached contract in the injured party's line of business.

### **Section 382**

The injured party shall not be entitled to compensation for that part of damage, which was caused by the non-fulfillment of its own duty to prevent the outbreak of damage or to constrain its extent, as stipulated by the applicable legislation.

### **Section 383**

In the event that several persons are bound to provide compensation for certain damage, these persons shall be bound to compensate such damage jointly and severally and then settle the amounts among themselves according to the extent of their responsibility.

### **Section 384**

(1) A person exposed to the risk of damage shall be bound to take the necessary measures in order to avert the damage or to mitigate it - owing to the circumstances of a particular case. The liable party shall not be bound to compensate damage that occurred due to the non-fulfillment of this duty by the injured party.

(2) The liable party shall be bound to compensate costs, incurred to the other party when fulfilling duties under subsection 1 above.

### **Section 385**

In the event that the injured party repudiates the contract due to the breach of a contractual obligation by the other party, it shall not be entitled to compensation for damage due to its failure to conclude in time a substitute contract for the purpose, which should have covered by the contract that the injured party had repudiated.

### **Section 386**

(1) The entitlement to compensation for damage can not be waived prior to the breach of an obligation, from which such damage may arise.

(2) The court cannot reduce compensation for damage.

## **PART XI**

### **EXTINCTIVE PRESCRIPTION (LIMITATION OF ACTIONS)**

#### **1**

### **THE SUBJECT OF PRESCRIPTION**

#### **Section 387**

(1) A right shall become statute-barred when the term of prescription stipulated by law runs out.

(2) All rights ensuing from contractual relations - with the exception of the right to repudiate a contract concluded for an indefinite period of time - are subject to prescription.

#### **2**

### **THE EFFECTS OF PRESCRIPTION**

#### **Section 388**

(1) The right to fulfil (perform) a certain obligation by the other party shall not become extinguished by prescription, but the right cannot be adjudged by a court if the liable party pleads prescription once the right has become statute-barred.

(2) However, even after the term of prescription runs out, the entitled party may claim its right when defending itself or may include it in the set-off:

- a) if both rights are related to the same contract or to several contracts concluded on the basis of the same negotiation, or several mutually interrelated negotiations, or
- b) if the right may have been claimed prior to the running out of the term of prescription for the set-off against a claim made by the other party.

#### **Section 389**

If a debtor performs an obligation after the term of prescription has run out, the debtor shall not be entitled to demand the return of what the subject of the performance (fulfillment), even if unaware at the time of performance that the term of prescription had already run out.

#### **Section 390**

If the right to carry out a legal act becomes statute-barred, the effects of that legal act shall not apply to the person who pleads prescription.

#### **3**

### **COMMENCEMENT AND DURATION OF THE TERM OF PRESCRIPTION**

#### **Section 391**

(1) A term of prescription applied to rights enforceable in court shall begin on the day when the right was asserted in court, unless this Act provides otherwise.

(2) The term of prescription applied to rights having to do with carrying out a certain legal act shall commence on the day on which such a legal act was executed, unless this Act provides otherwise.

#### **Section 392**

(1) As regards the right to fulfil an obligation, the term of prescription shall begin on the day on which the obligation was to have been performed or started (maturity). Should the subject of the said obligation concern the duty to carry on some continuous activity, or to withdraw from a certain activity, or to bear something, then the term of prescription shall commence on the day when such a duty is breached.

(2) As regards the right to provide partial fulfillment, a term of prescription shall apply to each partial fulfillment independently. In the event that due to non-performance of partial obligations, the obligation shall become mature as a whole, the term of prescription shall begin on the date that the non-performed obligation was due.

#### **Section 393**

(1) As regards rights arising from the breach of an obligation, the term of prescription shall

begin on the day on which the obligation was breached, unless the term of prescription for certain rights is stipulated otherwise.

(2) A term of prescription concerning rights related to defects in goods shall begin on the day of the delivery of such goods to the entitled person, or to a person entrusted by the entitled person, or on the day on which the obligation to accept the fulfillment was breached. As regards claims concerning quality guarantee, the term of prescription shall commence on the day on which timely notice of a defect is given within the term of guarantee, and as regards claims concerning legal defects, the term of prescription shall commence on the day on which such a right is asserted by a third person.

#### **Section 394**

(1) A term of prescription concerning rights arising from the repudiation of a contract shall begin on the day when the entitled party repudiates the contract.

(2) A term of prescription concerning the return of fulfillment rendered under a void contract shall begin on the day when the fulfillment was rendered.

(3) A term of prescription concerning claims of damage under Section 268 above shall commence on the day of the non-validity of such a legal act.

#### **Section 395**

As regards the right to demand the surrender of deposited or stored possessions (choses) or, under a contract, deposited securities and other valuables, the term of prescription shall commence on the expiry day of the contract concerning the storage or deposit of the choses, or on the expiry day of the contract the deposits of securities and other valuables. This shall not affect the right to demand such chosen on the basis of the right of ownership (title).

#### **Section 396**

In the case of the right to pecuniary means deposited on a current or a deposit account, the term of prescription shall commence on the expiry day of the contract on keeping such accounts.

#### **Section 397**

Unless this Act provides otherwise for individual rights, the term of prescription shall be four years.

#### **Section 398**

The term of prescription concerning the right to compensation for damage shall commence on the day when the injured party learned, or could have learned, of the damage, and of the party being liable to provide compensation, the term of prescription shall expire ten years at the latest from the day when such a breach of obligation occurred.

#### **Section 399**

Claims against a carrier and a forwarding agent ensuing from damage on consignments and from delayed delivery shall be prescribed (become statute-barred) after one year. As regards claims ensuing from the entire destruction or loss of the consignment, the term of prescription shall commence from the day when such a consignment should have been delivered to the consignee, as regards other rights, the term of prescription shall commence from the day on which the consignment in question was handed over. The general term of prescription, referred to in Section 397 above, shall apply to intentionally caused damage.

#### **Section 400**

A change in the person of the debtor or the creditor shall not affect the running of the term (commencement) of prescription.

#### **Section 401**

The party against whom the term of prescription runs may extend the term of prescription, even repeatedly, by issuing a written statement towards the other party, however, the entire term of prescription cannot exceed ten years from the time when it commenced the first time. The said written statement can be issued even prior to the commencement of the term of prescription.

### **4**

## **STOPPAGE AND INTERRUPTION OF THE TERM OF PRESCRIPTION**

#### **Section 402**

A term of prescription shall cease when the party of the creditor, in order to satisfy or determine its rights, takes legal measures, which according to the regulations on judicial proceedings, is regarded as the commencement of judicial proceedings, or an assertion of its rights in previously initiated proceedings.

#### **Section 403**

(1) The term of prescription shall cease when the creditor, under a valid arbitration agreement, begins arbitration proceedings in the manner stipulated in the arbitration agreement or in the regulations concerning arbitration proceedings.

(2) If it is impossible to determine the commencement of arbitration proceedings under subsection 1 above, the arbitration proceedings shall be deemed to have started on the day when a proposal to start the arbitration proceedings is delivered to the registered office, place of business, or residence of the other party.

#### **Section 404**

(1) If a certain right, which is subject to the term of prescription, was asserted within the judicial or arbitration proceedings as a counterclaim, the term of prescription shall cease on the day of the commencement of the judicial or arbitration proceedings regarding the right, against which the counterclaim is asserted, if the claim and the counterclaim are related to the same contract or to several contracts concluded on the basis of the same negotiations or several mutually related negotiations.

(2) As regards to instances, to which the provisions of subsection 1 above shall not apply, the counterclaim shall be regarded as asserted on the day, when a proposal (petition) regarding this counterclaim is submitted in judicial or arbitration proceedings.

#### **Section 405**

(1) If a right is asserted prior to the prescription in accordance with Sections 402 through 404 above, although no ruling was adopted in the matter of the said right, it shall apply that the term of prescription did not cease.

(2) If at the conclusion of the judicial or arbitration proceedings stated in subsection 1 above the term of prescription elapsed, or there is less than a year prior to its expiry, the term of

prescription shall be extended so that it shall no expire earlier than one year from the day that the judicial or arbitration proceedings conclude.

#### **Section 406**

- (1) Judicial or arbitration proceedings initiated against one co-debtor shall cause the term of prescription to stop running against another co-debtor, who is bound to joint and several liability with regard to the asserted claim, if the creditor notifies the co-debtor in writing of the said initiated proceedings prior to the expiry of the term of prescription.
- (2) If the judicial or arbitration proceedings are initiated by a third party against a creditor, whose right becomes statute-barred, regarding an obligation for whose performance the creditor has utilized the fulfillment rendered by a debtor, the term of prescription in respect to the creditor's rights shall stop running if the creditor notifies the debtor of the said initiated proceedings prior to the expiry of the term of prescription.
- (3) If the proceedings mentioned in subsections 1 and 2 above are concluded, it shall apply that the term of prescription in regard to the creditor's rights remains uninterrupted by the proceedings but shall not elapse earlier than one year following the said proceedings.

#### **Section 407**

- (1) If the debtor acknowledged the obligation in writing, a new four -year term takes effect on the day of such acknowledgement. If the acknowledgement concerns only a part of the obligation, the term of prescription shall start running only in respect of that part.
- (2) The payment of interest shall be considered as acknowledgement of an obligation in respect of the amount on which interest is paid.
- (3) If the debtor performs an obligation only partially, this performance shall affect the acknowledgement of the remaining part of the debt, if it may be presumed that the debtor acknowledges - by the rendered performance - the remaining part of the debt.
- (4) The effect of acknowledging an obligation in the manner stipulated in subsection 1 above shall occur even in the event that the right related to it was statute-barred at the time that the said obligation was acknowledged.

### **5**

#### **GENERAL RESTRICTION OF THE TERM OF PRESCRIPTION**

#### **Section 408**

- (1) Notwithstanding other provisions of this Act, the term of prescription shall terminate after ten years at the latest of the day when it first went into effect. Prescription cannot be rightfully asserted at judicial or arbitration proceedings prior to the termination of the term of prescription.
- (2) If a certain right has been legitimately acknowledged in judicial or arbitration proceedings no later than three months prior to the expiry of the term of prescription, of following its expiry, then the judicial ruling may be enforced if its execution procedure commences within three months from the day that it could have been commenced.

#### **PART XII SUBORDINATION CLAUSE**

#### **Section 408a**

- (1) The parties may agree that in the case of debtor's bankruptcy or winding-up accompanied by liquidation the claims of the creditor shall be satisfied only after the claims of the other creditors shall have been satisfied (hereinafter referred to only as "subordination clause").
- (2) The agreement containing a subordination clause must be executed in writing.
- (3) The agreement under subsection 1 above may be entered into for a definite period (however not less than 3 years) or for indefinite period.
- (4) The parties to an agreement containing a subordination clause may not agree such terms and conditions which would lead to its termination prior to the expiry of the period agreed upon pursuant to subsection 3 above.
- (5) To the extent the below concerns the subordination commitment the agreement containing a subordination clause may not be amended or integrated or terminated prior to the period of its performance. Also in case of agreements entered into for a definite period the term of the agreement may not be amended or converted to an agreement for indefinite time period.
- (6) The claims of a creditor arising out of an agreement containing a subordination clause may not be set-off against liabilities of a debtor and the liabilities of the debtor arising out of such agreement may not be set-off against the claims of a creditor.
- (7) No security may be provided in order to secure the settlement of claims under subsection 1 above.
- (8) The liabilities of the debtor arising out of an agreement containing a subordination clause may not be adhered to nor taken over.
- (9) The agreement under subsection 1 above shall terminate:
  - a) upon the expiry of its term. However if prior to such date a bankruptcy order is pronounced over the property of the debtor, arrangement with its creditors is permitted or the liquidation of the debtor commences, the agreement may not terminate prior to the closure of the bankruptcy proceedings, completion of the arrangement or termination of the liquidation proceedings,
  - b) after three years shall have elapsed from the receipt of a termination notice in case of an agreement for indefinite period. However if prior to such date a bankruptcy order is pronounced over the property of the debtor, arrangement with its creditors is permitted or the liquidation of the debtor commences, the agreement may not terminate prior to the closure of the bankruptcy proceedings, completion of the arrangement or termination of the liquidation proceedings,
  - c) upon winding-up of the debtor without liquidation, if such debtor is a bank.

#### **CHAPTER TWO SPECIAL PROVISIONS ON LAW OF CONTRACT**

#### **PART I CONTRACT OF SALE**

#### **1 SCOPE OF CONTRACT OF SALE**

#### **Section 409 FUNDAMENTAL PROVISIONS**

- (1) Under a contract of sale, a seller undertakes to deliver to a buyer goods (movables),

determined individually, or at least according to kind, and to assign to the buyer the title to the said goods while the buyer undertakes to pay the purchase price.

(2) The contract of sale must include the purchase price, or at least the method of determining such a price later, unless the contracting parties manifest their will to conclude the contract without determining the purchase price. In this event the buyer shall undertake to pay the purchase price determined under Section 448 below.

#### **Section 410**

(1) A contract concerning goods yet to be manufactured (produced) shall be deemed to be a contract of sale, unless the party to which the goods are to be delivered has undertaken to procure most things required for the manufacture (production) of the said goods.

(2) A contract of sale shall not be deemed to be a contract under which a major part of the obligation of the party which is to deliver the goods consists of performing only a certain activity or of assembling the goods.

## **2**

### **OBLIGATIONS OF THE SELLER**

#### **Section 411**

The seller shall undertake to deliver goods, to pass over the documentation related to the goods and to enable the buyer to take title to the goods in accordance with the contract and this Act.

### **DELIVERY OF THE GOODS**

#### **Section 412**

(1) In the event that under the contract the seller is not required to deliver the goods to a certain place, the delivery shall be effected once the goods are guarded over by the seller to the first carrier, if the contract stipulates the seller's obligation to dispatch the goods. The seller shall enable the buyer to exercise the rights ensuing from the forwarding contract towards the carrier, unless these rights, under the forwarding contract, are exercised by the buyer.

(2) In the event that the contract lacks provisions for the dispatch of the goods by the seller, and the goods are specified in the contract individually - or according to the kind - and the contract stipulates that the goods are to be delivered from a certain stock or to be manufactured (produced), and the contracting parties knew at the time of concluding the contract where the goods were stored or where the goods were to be manufactured, the delivery shall be effected if the seller enables the buyer to dispose of the goods at the said place.

(3) In the instances, to which subsections 1 and 2 above shall not apply, the seller shall perform the obligation to deliver the goods by entitling the buyer to dispose of the goods at the place where the seller has the registered office, the place of business or its organizational unit, or the residence, and notifies the buyer of the said place in time.

#### **Section 413**

If the delivery of the goods is effected by the dispatch, and the goods handed over to the carrier are not clearly and sufficiently marked as a consignment for the buyer, the effects of delivery shall occur only if the seller notifies the buyer without undue delay of the dispatch of the goods, and provides details of the dispatched goods. If the seller fails to do so, the delivery shall be

effected only when handed over by the carrier to the buyer.

#### **Section 414**

(1) The seller undertakes to deliver the goods:

- a) on the day which is stipulated in the contract or otherwise determined in the contract, or,
- b) any time within a certain period agreed in the contract or within a period determined in the contract in another manner, unless the contract or its purpose, known to the seller at the time of the conclusion of the contract, implies that the time of delivery within the said period is to be determined by the buyer.

(2) Unless the contract implies otherwise, the period for the delivery of the goods shall begin on the day that the contract is concluded. If the buyer is to perform certain obligations under the contract still prior to the term when the goods are to be delivered (e.g. to submit drawings required for the manufacture of the goods, to pay the purchase price or an installment of that price, or to arrange such payment) the delivery period shall begin only on the day of the fulfillment of the said obligation.

(3) If the seller delivers the goods prior to the stipulated time, the buyer shall be entitled to take the goods or to refuse the goods.

#### **Section 415**

Unless common business practice or the previous practice established between the parties implies otherwise, the following expressions, stipulating the time in the contract, shall have the following meaning:

- a) „at the beginning of a period“ - the first ten days of a period,
- b) „in the middle of a month“ - a period between the tenth and the twentieth of a month,
- c) „in the middle of a quarter“ - the second month of a quarter,
- d) „at the end of a period“ - within the last ten days of a period,
- e) „immediately“ („forthwith“) - within two days in regard to foodstuffs and raw materials, within ten days in regard to engineering products, and within five days in respect to other goods.

#### **Section 416**

In the event that the time of performance has not been agreed, the seller shall undertake to deliver the goods, without the buyer's invitation, within a reasonable period following the conclusion of the contract with regard to the nature of the goods and the place of delivery.

### **DOCUMENTS RELATED TO THE GOODS**

#### **Section 417**

The seller shall undertake to hand over to the buyer the documents necessary for the acceptance and use of the goods as well as other documentation stipulated in the contract.

#### **Section 418**

The handing over of the document, to which Section 419 below shall not apply, shall be effected at the place and time stipulated in the contract, or otherwise upon delivery of the goods. If the seller has passed over the documents prior to the stipulated time, any defects (mistakes) in the documents can be corrected until the stipulated time, unless this causes substantial problems or incurs costs to be buyer. The entitlement to compensation for damage is not hereby affected.

#### **Section 419**

(1) The documents required for the acceptance of the forwarded goods or for free disposal of such goods, or for customs clearance - when imported - shall be passed by the seller to the buyer at the place where the seller undertakes to pay the purchase price, if the handing over of the documents shall occur at the time of payment, or otherwise at the registered office or the place of business, or the residence, of the buyer.

(2) The documents stipulated in subsection 1 above shall be handed over by the seller to the buyer in enough time to allow the buyer to freely dispose of the goods or to take delivery of the forwarded goods when delivered to the place of destination and to clear imported goods at custom without undue delay.

### **QUANTITY, QUALITY, EXECUTION AND PACKAGING OF GOODS**

#### **Section 420**

(1) The seller undertakes to deliver the goods in the quantity, quality and execution as stipulated by the contract and must arrange for the goods to be packed and made ready for forwarding in a manner stipulated in the contract.

(2) Unless the contract stipulates the quality and execution of the goods otherwise, the seller shall undertake to deliver the goods in the quality and execution which is suitable for the purpose stated in the contract, or, in its absence, fit for the purpose for which such goods are usually used.

(3) If the goods are to be delivered according to a sample or a model (pattern), the seller shall undertake to deliver the goods with the properties of the sample or model (pattern) which was submitted to the buyer. If there is a discrepancy in the quality or the execution of the goods compared to the sample (model, pattern) and the purpose of the goods as stated in the contract, the determination stated in the contract shall be decisive. Unless there is a discrepancy in these determinations, the goods shall have the properties contained in both said determinations.

(4) Unless the contract stipulates how the goods shall be packed and made ready for forwarding, the seller is to have the goods packed and made ready for forwarding in the manner usual for such goods in business conduct. If such a manner cannot be determined, then they should be packed and made ready in a manner required for the storing and protection of the goods.

#### **Section 421**

(1) In the event that the contract implies the quantity is only approximately determined in the contract, the seller is entitled to determine an exact quantity of the goods to be delivered, unless the contract provides this right to the buyer. Unless the contract implies otherwise, a deviation may not exceed 5% of the quantity stipulated in the contract.

(2) If it arises from the nature of the goods, that its quantity is stipulated in the contract only approximately, the difference between the approximately determined quantity and the actual delivered quantity may not exceed 5% of the quantity indicated in the contract, unless the contract or previous practice between the parties or business conduct implies otherwise.

(3) In the instances to which subsections 1 and 2 above shall apply, the seller shall be entitled to payment of the purchase price for the goods actually delivered.

### **DEFECTS IN THE GOODS**

#### **Section 422**

(1) In the event that the seller breaches the obligation referred to in Section 420 above, the goods shall be deemed defective. Delivery of the other than contracted goods or defects in documentation required for the use of the goods shall be considered as defects in the goods.

(2) If from the consignment documentation, the document about handing over the goods (a delivery note), or a statement of the seller ensues that the goods are delivered in a smaller quantity, or only a partial delivery of the goods is provided, the provisions concerning the defects of goods shall not apply to the missing goods.

#### **Section 423**

In the event that in accordance with the contract things (materials, parts, etc.) provided by the buyer were utilized in the manufacture of the goods, the seller shall not be liable for defects in the goods arising from the things provided by the buyer, if with all due expert care the seller could not detect the unsuitability of such things for the manufacture of the goods in question, or if he had notified the buyer accordingly, but the buyer had insisted on their use.

#### **Section 424**

The seller shall not be liable for defects in such goods, when the buyer knew of their existence at the time that the contract was concluded, or must have known, unless the defects involve properties which the goods should have had under the contract.

#### **Section 425**

(1) The seller shall be liable for defects in the goods at the moment when the risk of damage passes to the buyer even when such a defect becomes apparent only afterwards. The obligations of the seller ensuing from guaranteeing the quality of the goods shall not hereby be affected.

(2) The seller shall also be liable for any defect, which arises after the time stipulated in subsection 1 above, if it has been caused by the breach of the seller's obligations.

#### **Section 426**

In the event that seller delivers the goods with the buyer's consent prior to the stipulated time of delivery, then - until the time stipulated in the contract - the seller may deliver any missing part or quantity of the delivered goods or deliver a substitution for the delivered faulty goods or repair defects, provided that the exercise of this right shall not cause difficulties or undue costs to the buyer. The buyer shall still be entitled to claim compensation for damage.

#### **Section 427**

(1) The buyer shall check the goods as soon as possible upon the transfer of the risk of damage to the goods, taking into account the nature of the goods.

(2) If the contract stipulates the dispatch of the goods by the seller, the inspection of the goods may be postponed until the delivery of the goods to the place of destination. If, however, the goods are directed during the forwarding to another destination or were again dispatched by the buyer without having the possibility to check the goods adequately with regard to the nature of the goods, while the seller knew or must have known, when concluding the contract, that the goods may be redirected or dispatched again, then the inspection may be postponed until the goods are delivered to the new point of destination.

(3) If the buyer fails to check the goods, or fails to have the goods checked at the time when the risk of damage is transferred, then claims ensuing from defects, which could have otherwise been detected during this check, can only be asserted when it is proven that the goods had already suffered from such defects at the time when the risk of damage to the goods was transferred.

#### **Section 428**

- (1) Buyer's rights arising from the defects in the goods cannot be asserted at judicial proceedings if the buyer fails to notify the seller of the defects of the goods without undue delay,
- a) after the buyer has detected such defects,
  - b) after the buyer has learned of defects which, however, could have been detected if expert care was taken during the obligatory check under Section 427 subsections 1 and 2 above, or,
  - c) after ascertaining the defects later although all professional care had been taken, at the latest, however, within two years after the delivery of the goods or after the time when the goods reached the place of destination stipulated in the contract. Defects, falling under the quality guarantee, shall be claimed within the period stipulated for in the quality guarantee.
- (2) The effects, stipulated in subsection 1 above, shall be taken into account when the seller pleads in judicial proceedings that the buyer failed to fulfil the obligation of providing notice of the defects of the goods.
- (3) The effects of subsections 1 and 2 above shall not apply if defects in the goods are a consequence of a fact, of which the seller knew, or must have known, at the time that the goods were delivered.

### **GUARANTEE QUALITY**

#### **Section 429**

- (1) By providing a guarantee (warranty) on the quality of goods in writing, the seller assumes the obligation that the delivered goods shall be fit for use in accordance with the contracted, or otherwise the usual purpose, and that the goods shall maintain the contracted, otherwise usual, properties for a certain period of time.
- (2) The assuming of an obligation to guarantee may ensue from the contract or from a declaration by the seller, in particular in the form of a letter of guarantee. The seller who assumes this obligation, shall arrange to have the guarantee period or the life expectancy (durability) or the period of utilization marked on the packaging of the delivered goods. Should the contract or the letter of guarantee stipulate a different guarantee period, the guarantee period stated therein shall be valid.

#### **Section 430**

Unless the contents of the contract or the letter of guarantee implies otherwise, the guarantee period shall take effect on the day that the goods are delivered. If the seller undertakes to dispatch the goods, then the guarantee period takes effect on the day the goods are delivered to the place of destination. The guarantee period shall not be in effect during periods when the buyer cannot use the goods due to defects for which the seller is liable.

#### **Section 431**

The seller's liability for defects, covered in the guarantee of quality, shall not include defects

caused by external factor after the risk of damage has passed on to the buyer, and were not caused by the seller or persons with whose assistance the seller performed the obligation.

#### **Section 432**

The provisions of Sections 426 through 428 above and Sections 436 through 441 below shall also apply to defect in the goods falling under a quality guarantee.

### **LEGAL DEFECTS OF THE GOODS**

#### **Section 433**

- (1) The goods shall suffer from legal defects if the sold goods are burdened with the rights of a third party, unless the buyer has agreed to such a restriction of rights.
- (2) If the goods are burdened with a third party's title, which ensues from intangible and similar property, the goods shall suffer from legal defects:
- a) if the right is legally protected under the legal system of the country where the seller has the registered office, the place of business or the residence,
  - b) if the seller knew, or must have known, that the right was legally protected under the legal system of the country where the buyer has the registered office, the place of business or the residence at the time of concluding the contract, or the seller knew or must have known that the right was legally protected under the legal system of the country, where the goods were to be sold or where they were to be used at the time of concluding the contract.

#### **Section 434**

A claim of the legal defects shall not apply if the buyer knew of a third party's title at the time when the contract was concluded, or if the seller was bound to perform the obligations according to the documentation provided by the buyer.

#### **Section 435**

- (1) The buyer shall notify the seller without undue delay when learning of the exercise of the right referred to in Section 433 above by a third person.
- (2) The seller's rights ensuing from legal defects of the goods cannot be exercised in judicial proceedings if the buyer fails to perform the obligation stipulated in subsection 1 above and the seller pleads the non-fulfillment of this obligation.
- (3) These effects shall not apply if the seller knew of the exercise of a third person's right at the time when the buyer learned of it.
- (4) The provisions of Sections 436 through 441 below shall apply to the buyer's claims ensuing from legal defects of the goods.

### **CLAIM ENSUING FROM DEFECTS OF THE GOODS**

#### **Section 436**

- (1) In the event that the contract is fundamentally breached by the delivery of defective goods (Section 345 subsection 2 above), the buyer may:
- a) demand the removal of such defects either by substituting the defective goods, providing missing goods or by removing the legal defects,
  - b) demand the removal of the defects in the goods by their repair, if repairable,

- c) demand an adequate discount from the purchase price, or,
- d) repudiate the contract.

(2) It shall be left to the buyer to choose from the entitlements stipulated in subsection 1 above provided that the buyer notifies the seller of the selected claim in a timely manner, or without undue delay. Once the buyer has asserted a certain claim, this claim cannot be changed without the seller's consent. Should it prove that the defects in the goods are unrepairable, or that unreasonable costs would be required for their repair, the buyer may demand the delivery of substitute goods provided that the seller is notified accordingly without undue delay after having learned from the seller of the situation. In the event that the seller fails to remove the defects within a reasonable additional period or in the event that the seller advises the buyer that the defects will not be removed prior to the expiry of such a period, the buyer may repudiate the contract or demand an appropriate discount from the purchase price.

(3) The buyer who fails to notify the seller of the selected claim within a period under subsection 2 above, shall be entitled to claims as in the case of a non-fundamental breach of the contract.

(4) In addition to the claims stipulated in subsection 1 above, the buyer shall be entitled to compensation for damage and to conventional fine, if agreed.

#### **Section 437**

(1) In the event that the delivery of the defective goods constitutes a non-essential breach of the contract, the buyer may demand either the delivery of missing goods and the removal of the remaining defects of the goods, or a discount of the purchase price.

(2) Until the buyer exercises the right to a discount from the purchase price or the buyer repudiates the contract under subsection 5 below, the seller is liable to deliver missing goods or to remove legal defects of the goods. The seller may remove the other defects in a manner of his own choice - either by repairing the goods or delivering substitute goods, the chosen method cannot, however, cause unreasonable costs to the buyer.

(3) If the buyer demands that the defects of the goods be removed, an additional reasonable period is to be provided by the buyer to the seller. Within this additional period, the buyer cannot exercise rights ensuing from defects in the goods - with the exception of the claim to damage and the claim to a conventional fine, unless the seller notifies the buyer that the obligations (concerning the removal of the defects) will not be fulfilled within the said period.

(4) Until the buyer determines a period under subsection 3 above or exercises the right to claim a discount from the purchase price, the seller may notify the buyer of the intent to remove the defects within a certain period of time. In the event that following this notification the buyer fails to advise the seller of his disapproval without undue delay, this notification shall have the effect of being relevant to the additional period under subsection 3 above.

(5) If the seller fails to remove defects in the goods within the period under subsections 3 and 4 above, the buyer may claim a discount from the purchase price, or repudiate the contract, provided that the buyer informs the seller of such an intention when determining the period under subsection 3 above or within a reasonable time prior to the repudiation of the contract. The buyer cannot change a chosen claim without the seller's consent.

#### **Section 438**

On delivery of the substitute goods, the seller is entitled to demand - at his own costs - the return of the substituted goods in the state in which these were delivered to the buyer. The provision of Section 441 below shall apply *per analogiam*.

#### **Section 439**

(1) A claim for a discount shall correspond to the difference between the value with the goods would have had without defects, and the value which the goods delivered with defects actually had. The decisive factor for determining such values shall be the time when the due performance should have been rendered.

(2) The buyer may discount the purchase price to be paid to the seller. In the event that the purchase price has already been paid, the buyer may demand the return of the amount corresponding to the discount together with the interest agreed in the contract, otherwise determined *per analogiam* pursuant to Section 502 below.

(3) In the event that a certain defect is not notified in time (Section 428 subsection 1 and Section 435 subsection 1 above), the buyer may exercise his rights under subsection 2 above only with the seller's consent, or exercise the right to include the claim for the set-off against the seller's claim. This restriction shall not apply if the seller knew of the defects at the time when the goods were delivered, as regards legal defects, the decisive factor shall be the period referred to in Section 435 subsection 1 above.

(4) Until the defects are removed, the buyer shall not be bound to pay that part of the purchase price which would correspond to a discount to be provided if the defects were not removed.

#### **Section 440**

(1) The claims arising from defects in the goods shall not affect the claim for compensation of damage, or the claim for a conventional fine. The buyer, who has become entitled to a discount on the purchase price, cannot demand compensation for lost profits resulting from inadequate properties of the goods to which the discount is related.

(2) The compensation which may be attained from claiming defects in the goods under Sections 436 and 437 above cannot be accomplished by claiming another legal ground.

#### **Section 441**

(1) The buyer cannot repudiate the contract if the buyer failed to inform the seller of the defects in time.

(2) The effects of the repudiation shall not commence, or shall be terminated, if the buyer cannot return the goods in the same state in which they were received.

(3) However, the provisions of subsection 2 above shall not apply:

- a) if the impossibility to return the goods in the aforementioned state is not caused by the buyer's conduct or neglect, or,
- b) if a change in the state of the goods resulted from a duly performed inspection in order to ascertain the defects in the goods.

(4) The provisions stipulated in subsection 2 above shall also not apply if prior to ascertaining the defects, the buyer sold the goods or a part of them, or consumed the goods or a part of them, or the goods were affected by current use. In such an event, the buyer shall be liable to return the goods yet unsold or the goods unconsumed or unchanged and to compensate the seller to the extent to which he acquired benefits from the use of the goods.

### **DELIVERY OF A LARGER QUANTITY OF GOODS**

#### **Section 442**

(1) If the seller delivers to the buyer a larger quantity of goods than contracted, the buyer may accept the entire delivery or reject the excessive quantity of the goods.

(2) If the buyer accepts the delivery of all or a part of the excessive goods, the buyer shall have to pay for the excessive goods by a corresponding amount based on the purchase price stipulated in the contract.

### 3 ACQUIRING OWNERSHIP RIGHTS

#### Section 443

(1) The buyer shall acquire ownership rights (title) to the goods as soon as the delivered goods are passed to the buyer.

(2) The buyer shall acquire title to the goods in transit when acquiring documentation which authorizes the buyer to control the goods.

#### Section 444

The parties may agree in writing that the buyer shall take title to the goods prior to the term referred to in Section 443 above, provided that the contract concerns the goods determined individually or determined according to kind, and that at the time of transfer of the title (ownership rights) to the goods concerned, such goods shall be sufficiently marked to be differentiated from other goods in the manner agreed upon by the parties, or, otherwise, notified - without undue delay - to the buyer.

#### Section 445

The parties may agree in writing that the buyer shall take title to the goods later than referred to in Section 443 above. Unless the contract - as regards the transfer of the title to the goods - implies otherwise, it shall be presumed that the buyer shall take title to the goods when the purchase price has been fully paid.

#### Section 446

The buyer shall acquire the ownership rights even in the event that the seller is not the owner of the sold goods, unless at the time when the buyer was to acquire the title to the goods the buyer knew that the seller was neither the owner, nor authorized to sell the goods.

### 4 OBLIGATIONS OF THE BUYER

#### Section 447

The buyer undertakes to pay the purchase price and to take over the delivered goods in accordance with the contract.

#### Section 448

(1) The buyer undertakes to pay the agreed purchase price.

(2) In the event that neither the purchase price nor the method of its determining is agreed in the contract, and if the contract is valid with regard to Section 409 subsection 2 above, the seller may demand to payment of the purchase price for which such, or comparable, goods were, as a

rule, sold at the time when the contract was concluded under the terms similar to those of the said contract.

(3) In the event that the purchase price is stipulated according to the weight of the goods, then, if in doubt, the decisive factor shall be the net weight of the goods.

#### Section 449

If the purchase price is to be made when handing over the goods or the documents, the buyer shall pay the price at the place of such transfer.

#### Section 450

(1) Unless the contract provides otherwise, the buyer shall undertake to pay the purchase price when the seller - in accordance with the contract and this Act - enables the buyer either to dispose of the goods, or to dispose of the documentation authorizing the same. The handing over of the goods or the documentation may be made dependent upon the payment of the purchase price.

(2) If, under the contract, the seller is to dispatch the goods, the seller may decide to do so under the condition that the goods, or the documents enabling the disposal of the goods, shall only be handed over upon the payment of the purchase price, unless this contradicts the agreed method of paying the purchase price.

(3) The buyer shall not be obliged to pay the purchase price until having an opportunity to inspect the goods, unless the agreed method of delivery of the goods or the payment of the purchase price provides otherwise.

#### Section 451

The buyer shall take measures, required under the contract and this Act, in order to enable the seller to make delivery of the goods. The buyer shall take delivery of the goods, unless the contract or this Act implies that the buyer may refuse the delivery.

#### Section 452

(1) If, under the contract it is left up to the buyer to specify the form, size or properties of the goods only subsequently within an agreed period, or if not agreed within a reasonable time following the buyer's receipt of a seller's written request, the seller may specify them with regard to the buyer's requirements if known to the seller. The other rights of the seller shall not hereby be affected.

(2) If the seller thus specifies certain aspects according to his own assessment, these must be notified to the buyer, soliciting the buyer's response, within a reasonably stipulated period, so that the buyer, when responding, may specify proposed aspects otherwise. Should the buyer fail to respond within a certain period, the specification - advised by the seller - shall become binding.

#### Section 453

The seller may require the buyer to pay the purchase price, to take delivery of the goods and to perform other obligations until the seller has exercised the right arising from the breach of the contract, incompatible with such a requirement.

#### Section 454



If a guarantee has been agreed upon to cover the payment of the purchase price, the buyer shall hand over the documents which prove that the payment of the purchase price has been secured in accordance with the contract, these documents shall be handed over to the seller within an agreed period, otherwise prior to the agreed delivery period of the goods. If the buyer fails to perform this obligation, the seller may refuse to deliver the goods until receipt of such documents. If the buyer fails to secure the payment of the purchase price within an additional reasonable period, the seller may repudiate the contract.

## 5

### RISK OF DAMAGE TO THE GOODS

#### Section 455

Risk of damage to the goods (Section 368 subsection 2 above) shall pass over to the buyer upon the delivery of the goods by the seller, or, if failing to do so in time, at the time when the seller enables the buyer to dispose of the goods and the buyer breaches the contract by not taking delivery of the goods.

#### Section 456

If the buyer is to take delivery of the goods from a person other than the seller, the risk of damage shall pass over to the buyer at the time stipulated for the delivery of the goods if at that time it is made possible to the buyer to dispose of the goods, and the buyer is aware of that possibility. If it is made possible to the buyer to dispose of the goods only later, or if the buyer learns of that possibility only later, the risk of damage passes on to the buyer at the time when he has learned, and is informed of, the possibility to take delivery of the goods.

#### Section 457

If, under the contract, the seller is to hand over the goods to a certain carrier at a certain place for forwarding to the buyer, the risk of damage to the goods shall pass upon handing over the goods to the carrier at that place. If the contract of purchase includes the seller's obligation to dispatch the goods but the seller is not bound to hand over the goods to the carrier at a certain place, the risk of damage to the goods shall pass to the buyer when the goods are handed over to the first carrier for forwarding to the place of destination. The fact that the seller disposes of documents related to the forwarded goods shall have no effect on the passing of the risk of damage to the goods concerned.

#### Section 458

Risk of damage to the goods, determined according to the kind of the goods, and not taken over by the buyer, shall not pass over to the buyer until the goods are provided with clear markings as stated in the contract, or transport documentation, or in the notice sent to the buyer, or otherwise stipulated.

#### Section 459

The parties may agree that the risk of damage to the goods shall pass prior to the time referred to in Sections 455 and 458 above only as regards the goods, determined individually, or according to the kind, provided that such goods are sufficiently set aside from other goods and conspicuously marked at the time of the passing of the risk of damage.

#### Section 460

In the event that the goods are forwarded at the time when the contract is only being concluded, the risk of damage to the goods shall pass to the buyer upon handing over the goods to the first carrier. If, however, at the time of the conclusion of the contract the seller knew, or owing to the circumstances ought to have known, that the goods had been damaged, the risk of damage to the goods shall be borne by the seller.

#### Section 461

- (1) Damage to the goods which occurred after the passing of the risk to the buyer shall have no effects on the buyer's obligation to pay the purchase price, unless the damage occurred due to the breach of an obligation by the seller.
- (2) The effects under subsection 1 above shall not apply if the buyer made use of the right to demand the delivery of substitute goods or to repudiate the contract.

## 6

### PRESERVING THE GOODS

#### Section 462

If the buyer is in delay with taking delivery of the goods or with paying the purchase price in instances when taking delivery of the goods and the payment of the purchase price shall occur simultaneously, and the goods are either kept by the seller or the seller can otherwise dispose of the goods, the seller must take measures, adequate to the circumstances, to store the goods. The seller shall be entitled to hold up the goods until the buyer pays reasonable costs thus incurred to the seller.

#### Section 463

In the event that the buyer has received the goods and intends to refuse the goods, the buyer shall be bound to take measures, adequate to the circumstances, for safe storage of such goods. Until the seller pays the reasonable costs thus incurred to the buyer, the buyer shall be entitled to hold up the goods that are to be returned to the seller.

#### Section 464

If, after the goods have been forwarded to the place of destination, the buyer has the possibility to dispose of such goods and to exercise the right to refuse the said goods, it shall be the buyer's obligation to take over the goods and store the goods at the seller's costs if this can be done without the payment of the purchase price and without unreasonable difficulties and costs. This obligation shall not apply to the buyer when either the seller, or a person entrusted by the seller to take care of the goods, is present at the place of destination. Upon taking over the goods by the buyer, the provisions of Section 463 above shall apply to the buyer's rights and obligations.

#### Section 465

The liable party may fulfil the duties - referred to in Sections 462 through 464 above - by storing the goods at a warehouse at the costs of the other party, and may demand the compensation of reasonable costs thus incurred.

#### **Section 466**

The party which is in delay with taking delivery or taking return delivery of the goods or with the payment of the purchase price - to be effected upon taking delivery of the goods, or with the payment of the costs related to the fulfillment of duties under Sections 462 through 464 above, may be invited to fulfil the duties. The other party shall be entitled to include in the invitation concerning the taking over of the goods an adequate period, and if it elapses unutilized, then the party shall sell the goods in a suitable manner. Prior to selling the goods, it shall be necessary to notify the party - which is in delay - of this intention. This intention to sell the goods may be conveyed to the other party when setting the period for taking over the goods.

#### **Section 467**

The party, bearing the duties under Sections 462 through 464 above, must take measures to sell perishable goods or goods whose storage incurs unreasonable costs, and if it is possible, to notify the other party of the envisaged sale.

#### **Section 468**

The party which sold the goods shall be entitled to retain from the proceeds of the sale an amount corresponding to reasonable costs connected with the fulfillment of the duties under Sections 462 through 464 above and with the sale of the goods. The remaining amount from the sale shall be provided to the other party without undue delay.

### **7**

#### **SPECIAL PROVISIONS ON DAMAGES**

#### **Section 469**

In the event that a party - in accordance with this Act - repudiates a contract and within a reasonable period after the repudiation either the buyer, or the seller, concludes a substitute deal concerning such goods as under the repudiated contract, then a claim for compensation of damage, under this Act, shall include the difference between the purchase price under the repudiated contract and the price agreed in the substitute deal. The contents of the contract shall be taken into account in determining such a difference. Claims for compensation of the remaining damage shall not hereby be affected.

#### **Section 470**

(1) In the instances to which Section 469 above shall not apply, the claim for compensation of damage of the party which has repudiated the contract concerning the goods with the usual price, shall be given by a difference between the purchase price stipulated in the contract and the usual price for the same goods of the same or comparable quality under similar contractual conditions. Claims for compensation of the remaining damage shall not hereby be affected.

(2) The decisive price shall be the price prevailing at the time when the contract is repudiated, if, however, the delivery of the goods took place prior to the repudiation of the contract, the prices attained at the time of the delivery of the goods shall be decisive.

### **PART II CLAUSES IN CONTRACTS OF SALE**

### **1 TRIAL PURCHASE**

#### **Section 471**

A trial purchase is established by the conclusion of a contract of sale with the provisory clause that the buyer (purchaser) will approve the goods within a trial period. Unless the contract stipulates the trial period, it shall be presumed that it shall last three months from the day when the contract is concluded.

#### **Section 472**

(1) In the event that the buyer has not yet taken delivery of the goods, the provisory clause shall have a deferring effect and shall be frustrated if, within the trial period, the buyer fails to notify the seller that the goods have been approved.

(2) If the buyer has, however, already taken delivery of the goods, the provisory clause shall be disengaged and it shall be assumed that the buyer has approved the goods, unless the buyer has rejected the goods within the trial period.

(3) The buyer shall not be entitled to reject the goods in the event that the buyer cannot return the goods in the state in which the goods were delivered.

### **2 PRICE CLAUSE**

#### **Section 473**

In the event that the contracting parties agree when determining the price, that the price is to be additionally adjusted with regard to production costs and in the event that they fail to agree on which factors of production shall be decisive, the purchase price shall change in relation to the prices of main raw materials required for the production (manufacture) of the contracted goods.

#### **Section 474**

(1) In the event that the parties fail to stipulate in the contract which period shall be decisive for considering price fluctuations, the parties shall take into account the prices valid at the time when the contract was concluded and at the time of the delivery of the goods by the seller. If delivery of the goods is to take place within a certain period of time, the time of the actual fulfillment, or, otherwise, the end of that period shall be decisive.

(2) If the seller is in delay with the delivery, and the prices of decisive production factors are lower at the time of the actual performance than at the time under subsection 1 above, these lower prices shall be taken into account.

#### **Section 475**

The rights and obligations ensuing from the clause shall be terminated unless the entitled party exercises the rights towards the other party without undue delay following the delivery of the goods.

### **PART III CONTRACT OF SALE OF AN ENTERPRISE**

**Section 476**  
**FUNDAMENTAL PROVISIONS**

- (1) Under a contract of sale of an enterprise, the seller undertakes to transfer to the buyer title to the choses (things, other rights and other tangible values) which are utilized in the operation of the enterprise in question, and the buyer undertakes to assume the obligations of the seller related to the enterprise and to pay the purchase (sale) price.
- (2) The contract must be in writing and must contain authenticated signatures of both the buyer and the seller.

**Section 477**

- (1) The buyer shall assume all the rights and obligations related to the sale of a certain enterprise.
- (2) The transfer of claims shall be subject to the provisions concerning the assignment of claims.
- (3) No creditor's consent shall be required for the transfer of an obligation, however, the seller shall be liable to the buyer for the fulfillment of the transferred obligations.
- (4) Without undue delay the buyer shall notify the creditors of the assumption of obligations, and the seller shall notify the debtors of the transfer of claims to the buyer.

**Section 478**

- (1) In the event that the sale of an enterprise makes it harder for a creditor to collect on his claims, the creditor may submit a protest to a court within sixty days from the day when the creditor learns of the sale of the enterprise, however no later than within six months from the day when the sale of the said enterprise is entered into the Companies Register (Section 488 subsection 1 below). The creditor may demand a judicial ruling that the transfer of the seller's claim to the buyer be ineffective towards this creditor.
- (2) In the event that the seller is not registered in the Companies Register, a protest may be submitted to a court within sixty days from the day when the creditor learns of the sale of the enterprise, however no later than six months from the conclusion of the contract.
- (3) In the event that the creditor successfully exercises the right under subsection 1 or subsection 2 above, the seller is liable to perform the obligation to this creditor within the term of maturity and shall be entitled to demand that the buyer render the fulfillment, including appurtenances.

**Section 479**

- (1) All rights to intangible property related to the business activities of a certain enterprise, shall be transferred to the buyer of that enterprise. In the event that the performance of certain business activities shall be decisive for the assumption or maintenance of these rights by the acquirer of the enterprise, such business activities related to the operation of the enterprise, even if occurring prior to the sale of the enterprise and not only after that sale, shall be included as business activities performed by the acquirer.
- (2) However, the transfer of rights under subsection 1 above shall not occur if such transfer were to contradict either the contract on granting performance rights ensuing from intangible and similar property, or the nature of such rights.

**Section 480**

The rights and duties ensuing from labor-law relations to employees of the enterprise shall be transferred from the seller to the buyer.

**Section 481**

- (1) Unless the contract implies otherwise, the right to use the business name shall be transferred together with the enterprise under the contract of sale, as long as this is not at variance with the law or a third person's right. Such a transfer shall not be prevented by the change in the legal type (form) of the person entitled to entrepreneurial activities.
- (2) If the enterprise is sold between individuals, the buyer may use the seller's business name only if it is stipulated in the contract and only with an addendum noting the successorship in the business activities.

**Section 482**

It shall be presumed that the price of the enterprise shall be determined on the basis of the data on the total of the enterprise's things, rights and obligations as given in accountancy books of the enterprise on the day when the contract is concluded and on the basis of other values stated in the contract but not appearing in the accountancy books. If the contract is to become effective at a later date, the selling price shall be increased or reduced with regard to the increase or reduction of the assets which occurred in the meantime.

**Section 483**

- (1) As of the day when the contract becomes effective, the seller shall undertake to pass over and the buyer to take over all things included in the sale. A deed concerning the hand-over shall be signed by both parties.
- (2) Risk of damage to the things shall be transferred from the seller to the buyer by handing the things over.
- (3) Ownership rights (title) to the things included in the contract of sale shall be transferred from the seller to the buyer as of the day when the contract becomes effective. Ownership rights to immovable assets shall be transferred upon their registration in the Register of Real Estate. The provisions of Sections 444 through 446 above shall apply *mutatis mutandis*.

**Section 484**

The seller shall undertake to notify the buyer, at the latest in the deed under Section 483 subsection 1 above, of transferred things, rights, obligations and other assets of which the seller knows or must know, otherwise, the seller shall be liable for any damage which could be prevented by such a notification.

**Section 485**

The deed on the handing over of things under Section 483 subsection 1 above, shall include all missing and defective things. Things shall be considered to be missing if the seller has not passed them on to the buyer although according to the accountancy books and the contract they are to be included in the assets of the enterprise which is being sold. When assessing the defects of things, it shall be taken into consideration whether such things are fit for use in the operation of the enterprise, and the time of their previous use according to the accountancy books.

**Section 486**

- (1) The buyer shall be entitled to demand a reasonable discount off the purchase price in regards to missing or defective things. In the event that missing things or ascertainable defects are not recorded in the deed under Section 483 subsection 1 above, the right to a discount cannot be

exercised in judicial proceedings, unless the seller knew of them at the time of handing over the things. These effects shall also apply to defects, ascertainable only in the running of the enterprise, provided that the buyer notifies the seller without undue delay, after such defects are detected or with expert care could have been detected, however at the latest within six months from the effective date of the contract (Section 482 above). The provisions of Section 428 subsection 2 and Section 439 above shall apply *per analogiam*.

(2) The buyer is entitled to repudiate the contract in the event that the enterprise is not fit for operation stipulated in the contract, and defects which were reported in time may not be remedied, or the seller fails to rectify them within a reasonable period of time determined by the buyer. The provision of Section 441 above shall apply *mutatis mutandis*.

(3) The buyer may claim a discount off the selling price with regard to obligations, which were transferred to the buyer - without being recorded in the accountancy books - on the effective day of the contract only except of if the buyer knew of them at the time of the conclusion of the contract.

(4) The provisions of Sections 433 through 435 above shall apply, *per analogiam*, to legal defects of the enterprise under the contract of sale. In the event that the title to immovable assets, included in the property of the enterprise, is not assigned to the buyer, and the seller fails to rectify this defect within a reasonable period of time determined by the buyer, the buyer may repudiate the contract.

(5) The rights under the above-mentioned paragraphs shall not affect claims for compensation of damage. The provisions of Section 440 above shall apply *per analogiam*.

#### **Section 487**

The provisions of Sections 477 through 486 above shall also apply to contracts under which a certain part of an enterprise - being an independent organizational division - shall be sold.

#### **Section 488**

(1) If an enterprise is sold by a person registered in the Companies Register, the person shall request the entry of the sale of the enterprise, or the sale of its organizational unit (division), into the Companies Register.

(2) A legal entity, who has sold the enterprise comprising of all its assets, may finish its liquidation and be erased from the Companies Register only after the elapse of one year from such a sale, if within that period no judicial proceedings under Section 478 above commenced, or later, when all claims from such proceedings, asserted by the court, have been secured or satisfied.

### **PART IV CONTRACT OF PURCHASE OF A LEASED OBJECT**

#### **Section 489 FUNDAMENTAL PROVISIONS**

(1) Under a contract of purchase of a leased object, the parties shall agree either in the contract of lease, or following its conclusion, that the lessee is entitled to purchase the leased object, or the leased set of objects, within the validity of the contract of lease or upon its termination.

(2) The contract must be in writing.

#### **Section 490**

If within the validity of the contract of lease, the lessee is entitled to purchase the leased object, then upon delivery of a written notification advising the exercise of the right - in accordance with the contract of purchase of the leased object - the contract of lease shall be terminated even if concluded for a specific period of time.

#### **Section 491**

If, under the contract, the lessee is entitled to purchase the leased object upon the termination of the contract of lease, this right shall be extinguished unless the entitled party notifies the other party in writing of the will to purchase the leased object without undue delay following the termination of the contract of lease.

#### **Section 492**

If the entitled party notifies the other party in writing - in accordance with the contract of purchase of a leased object - that it exercises the right to purchase the leased object being the subject of the contract of lease, the contract of purchase is established upon the delivery of the said notification. The entitled party shall have the status of the buyer, and the other party the status of the seller.

#### **Section 493**

(1) On establishing a contract of purchase (Section 492 above) the ownership right (the title) to a movable thing shall be transferred to the purchaser. The ownership title to immovable assets shall be transferred upon its registration in the Register of Real Estate.

(2) The risk of damage to the object shall be transferred to the buyer upon establishing the contract of purchase (Section 492 above).

#### **Section 494**

(1) In the event that the contract (agreement) fails to determine both the purchase price decisive for exercising the right to purchase a leased object and the method of its determination, the buyer shall be obliged to pay the purchase price under Section 448 subsection 2 above. The purchase price shall not be affected by damage or depreciation for which the lessee is responsible.

(2) The buyer shall pay the purchase price without undue delay following the establishment of the contract of purchase.

#### **Section 495**

(1) The properties which a leased object should have had shall be decisive when assessing a defect in the leased object.

(2) The period for declaring a defect in the purchased object shall commence on the day when the lessee has taken over the leased object.

(3) If the title to the leased object is not transferred to the buyer and the seller fails to rectify the defect within a reasonable additional period determined by the buyer, the buyer may repudiate the contract.

#### **Section 496**

(1) The contract may stipulate that after a certain term in the validity of the contract of lease, the lessee shall acquire the ownership right to the leased object, free of charge, if the lessee claims

this right against the lessor.

(2) The person who acquires ownership under subsection 1 above shall not be entitled to claim defects, with the exception of legal defects, unless the acquirer is also give a quality guarantee.

## **PART V CREDIT CONTRACT**

### **Section 497 FUNDAMENTAL PROVISIONS**

Under a credit contract, the creditor undertakes to provide pecuniary means up to a certain amount upon the debtor's request, and the debtor undertakes to pay back the provided pecuniary means together with interest.

#### **Section 498**

The parties may determine that the subject of their contract shall be pecuniary means in another currency besides Slovak Crowns, unless this contradicts foreign exchange regulations. Unless the parties agree otherwise, the debtor is obliged to return the pecuniary means in the currency in which the credit was provided, and also to pay interest in the same currency.

#### **Section 499**

If the creditor's business activities constitute providing credit, the payment of a certain amount of money may be agreed for arranging the provision of the pecuniary means.

#### **Section 500**

(1) The debtor is entitled to demand the amount of pecuniary means (money) within the period stipulated in the contract. If such a period is not stipulated in the contract, the debtor may claim the amount until the contract is terminated by one of the parties.

(2) If the contract fails to stipulate a notice period, the debtor may repudiate the contract with an immediate effect, whereas the creditor's repudiation of the contract becomes effective at the end of the calendar month following the month in which the notice was delivered to the debtor.

#### **Section 501**

(1) It shall be the creditor's obligation to provide pecuniary means to the debtor if required by the debtor in conformity with the contract. The pecuniary means are to be provided within the period determined by the debtor, otherwise without undue delay.

(2) If the contract stipulates that the credit may be used for a certain purpose only, the creditor may restrict the provision of pecuniary means to the performance of the debtor's obligation related to such a purpose.

#### **Section 502**

(1) From the time that the pecuniary means are provided, the debtor is to pay interest at the agreed rate, otherwise at the highest rate stipulated by the law or on the basis of this Act. If the interest rate is not stipulated in this manner, the debtor is to pay the usual rate of interest required by banks - when providing credit - at the debtor's registered office of business at the time of the conclusion of the contract. If the parties agree the payment of interest rates higher than the rate stipulated by law or on the basis of this Act, the debtor is to pay the rate of interest at the highest

permissible rate.

(2) In case of doubt, it shall be presumed that the agreed rate of interest applies to an annual period.

#### **Section 503**

(1) The obligation to pay interest shall be due when the obligation to repay the pecuniary means is due. If the period for repaying the provided pecuniary means is longer than one year, the interest shall be due at the end of each calendar year. At the time when the remaining amount of the provided pecuniary means is to be repaid, the interest related to that amount of money shall also be due.

(2) If the provided pecuniary means are to be repaid in installments, then on the day when an installment is due, interest on this installment shall also be due.

(3) The debtor is entitled to repay the provided pecuniary means prior to the time stipulated in the contract. The interest is to be paid from the period when the pecuniary means were provided until their repayment.

#### **Section 504**

The debtor must repay the pecuniary means within the agreed period, otherwise within one month from the day when the creditor demands repayment.

#### **Section 505**

If, within the duration of a contract, the securing of an obligation to repay the provided pecuniary means expires or deteriorates, the debtor must supplement the securing of the debt to the original extent. If the debtor fails to do so within a reasonable time, the creditor may repudiate the contract and demand from the debtor the repayment of the debt together with interest.

#### **Section 506**

If the debtor is in arrears with the repayment of more than two installments, or one installment for a period longer than three months, the creditor is entitled to repudiate the contract and to demand from the debtor the repayment of the debt together with interest.

#### **Section 507**

If, under the contract, the provided pecuniary means are to be used by the debtor for a certain purpose only and the debtor makes use of the money for another purpose, or if the use of the money for the agreed purpose becomes impossible, the creditor is entitled to repudiate the contract and to demand repayment of the utilized and not refunded amount of money together with interest without undue delay.

## **PART VI LICENSING CONTRACT (INTANGIBLE INDUSTRIAL RIGHTS)**

### **Section 508 FUNDAMENTAL PROVISIONS**

(1) Under a licensing contract concerning intangible industrial rights, the licensor grants a license to the licensee to exercise rights ensuing from the intangible industrial rights to an agreed

extent and in the agreed territory, and the licensee undertakes to pay for such rights, or to provide as payment other material values - payment in kind.

(2) The contract must be in writing.

#### **Section 509**

(1) If special legislation so provides, the exercise of rights granted on the basis of such a contract - shall require the entry into a relevant register of such rights.

(2) If the maintenance of a right depends on its performance, the acquirer of the right is bounded to this performance.

#### **Section 510**

The licensor is bound to maintain the right for the duration of the contract if the nature of such a right so requires.

#### **Section 511**

(1) The licensor is entitled to continued performance of the right which is the subject of the contract, and may also grant such a performance right to other persons.

(2) The licensee shall not be entitled to transfer the performance right to other persons.

#### **Section 512**

Following the conclusion of the contract, the licensor is to provide the licensee with all the documentation and information required for the exercise of the right as under the contract, without undue delay.

#### **Section 513**

The licensee is bound to keep confidential both the documentation and information provided under the contract in regard to third persons, unless the contract or the nature of the provided documentation and information implies that the licensor is not interested in keeping such information confidential. Those who take part in business activities of the licensee and are bound to keep the information confidential shall not be considered as third persons. When the contract expires, the licensee is obliged to return all the provided documentation to the licensor and to observe confidentiality until the information becomes generally known.

#### **Section 514**

(1) If the licensee is restricted in the performance of his right due to the actions of other persons, or if the licensee ascertains that other persons have breached this right, the licensee must inform the licensor accordingly without undue delay.

(2) The licensor must take all necessary legal measures to protect the licensee's performance right without undue delay. The licensee must co-operate with the licensor in this respect.

#### **Section 515**

If the contract is not concluded for a specific period of time, it may be repudiated. If the contract fails to stipulate a notice period, the given notice shall take effect one year as of the end of the month in which such a notice is delivered to the other party.

### **PART VII CONTRACT ON KEEPING AN OBJECT IN CUSTODY**

#### **Section 516 FUNDAMENTAL PROVISIONS**

(1) Under a contract related to keeping an object in custody, the depository undertakes to keep an object in custody temporarily and free of charge within the framework of business relations towards the depositor.

(2) If the contract fails to stipulate whether any payment is to be made to the depository for keeping the object in custody, and the depository's business activities do not include safekeeping, it shall be presumed that the parties have concluded a contract related to keeping the object in custody.

#### **Section 517**

The depository must take care of the object kept in custody and prevent its damage with respect to the nature of the object and his own possibilities. If keeping the object in custody requires special measures, the depository is to take them if they are stipulated in the contract, or if the depositor made them known prior to the conclusion of the contract. The depository must insure the object against damage only if the contract so stipulates.

#### **Section 518**

If, under the contract, the depository is to take care of a certain object in a certain manner, the depository may depart from the manner in the event of unforeseeable circumstances which neither party could anticipate at the time of the conclusion of the contract if such circumstances make the performance of the obligation unreasonably difficult. The depository must notify the depositor accordingly in due time.

#### **Section 519**

(1) If the depository passes the object to a third person for safekeeping without the depositor's consent, the depository is responsible for the object as if it was kept in his custody. If this occurs with the depositor's consent, the depository is liable as a mandatory.

(2) If, contrary to the contract, the depository passed the object to a third person's care, risk of damage to that object passes on the depository. The provisions of Section 518 above shall not hereby be affected.

#### **Section 520**

The depository may not use the object, or enable its use to a third person, without the depositor's consent.

#### **Section 521**

(1) The depositor shall compensate to the depository damage caused by the deposited object if the depository could not prevent such damage with all due care (under Section 517 above). The depositor must also reimburse the necessary and purposefully incurred cost connected with the performance of the latter's obligation.

(2) As regards extraordinary costs, unforeseen at the time of the conclusion of the contract, the depository is to ask for the depositor's consent prior to the expenditure if possible. Unless the depositor advises the depository to the contrary without undue delay, it shall be presumed that the depositor agrees to the proposed expenditure.

(3) If the depository incurs the costs mentioned in subsection 2 above without having asked for the depositor's consent and the depositor does not approve subsequent reimbursement of the cost to the depository, the depository may demand the reimbursement of such costs which the depositor has saved by not paying the costs.

(4) The costs, which are to be rightfully reimbursed to the depository, must be paid by the depositor without undue delay following the depository's request concerning this matter, however, at the latest, by the time when the object is collected by the depositor.

#### **Section 522**

The depository must return the object kept in custody under the contract, at the place where the object is to be kept in accordance with the contract, otherwise at his registered office, or at the place of the depository's premises where the object is kept.

#### **Section 523**

(1) Even if a period for which the object is to be kept in custody has been agreed, the depository must return the object without undue delay when asked to do so.

(2) The depository is entitled to ask the depositor to take over the object without undue delay still to the expiry of the agreed period if further fulfillment of this obligation could cause difficulties, unforeseen at the time of the conclusion of the contract, or if a third person demands the object in question.

#### **Section 524**

If the period, for which the object is to be kept, does not ensue from either the agreement of the parties, or from the circumstances under which the contract was concluded, the depository must return the object upon the depositor's request without undue delay, and similarly, the depositor must collect the object without undue delay following the depository's request in this respect.

#### **Section 525**

If the depositor fails to collect the object in time, the depository may provide a reasonable period for doing so. If the depositor fails to take over the object within this period, the depository may repudiate the contract. The depository may sell the object at the depositor's cost, or deposit the object with a third person at the depositor's cost, provided that the depository notifies the depositor of this, giving him the additional time for performance.

#### **Section 526**

The provisions of Sections 517 through 525 above shall apply, *mutatis mutandis*, to determining the rights and obligations of the contracting parties even in cases - to which the provisions of this Act on types of contracts other than the contract on keeping an object in custody would otherwise apply - when one party is to take gratuitous care of an object which this party keeps for the other party, unless these provisions imply otherwise.

### **PART VIII CONTRACT OF STORAGE**

#### **Section 527 FUNDAMENTAL PROVISIONS**

(1) Under a contract of storage, the warehouse-keeper undertakes to store an object and to take care of it, and the depositor undertakes to pay storage for the warehouse-keeper's services.

(2) If the contract fails to stipulate whether an object is to be stored free of charge or whether storage is to be paid, then if the business activities of the warehouse-keeper comprise the provision of storage facilities, it shall apply that the parties have concluded a contract of storage.

#### **Section 528**

(1) The warehouse-keeper must take over the object at the time that the depositor hands it over and confirm the receipt of the object in writing.

(2) The document confirming the receipt of the object for storage may be considered a negotiable instrument to which the right to demand the release of the stored object is attached (a warehouse-keeper's receipt, also referred to as warehouse receipt or warehouse-keeper's certificate.)

(3) The warehouse-keeper's receipt may either be issued to the bearer or may be registered in the name of the owner. If the warehouse-keeper's receipt is issued to the bearer, the warehouse-keeper must release the object to the person presenting the receipt. If the warehouse-keeper's receipt is issued in the name of a specified person, then the warehouse-keeper is to release the stored object only to the person registered in the document. The warehouse-keeper's receipt may be endorsed by the entitled person to other persons, unless endorsement is prohibited. The provisions on bills of exchange shall apply, *mutatis mutandis*, to such endorsement.

(4) A person entitled to demand the release of the object on the basis of a warehouse-keeper's receipt shall have the status of the depositor, and must confirm the collection of the stored object in the warehouse-keeper's receipt upon the warehouse-keeper's request.

#### **Section 529**

Unless the contract provides otherwise, the contract shall be terminated if the depositor fails to hand over to the warehouse-keeper the object for storage within the time stipulated in the contract, otherwise within six months from the conclusion of the contract.

#### **Section 530**

The warehouse-keeper must store the object separately from other goods and with a marking indicating that the object belongs to the depositor. The depositor shall be entitled to check the condition of the stored object and to take samples of the object.

#### **Section 531**

(1) The depositor shall pay storage as of the day on which the object is passed on to the warehouse-keeper, the payment shall be made in the amount and in the manner agreed in the contract.

(2) If the amount to be paid as storage is not agreed in the contract, the depositor shall pay the amount common at the time of the conclusion of the contract with regard to the nature of the object, the manner of storing the object and the duration of storage.

(3) If the object is stored for more than six months, the amount in arrears shall be paid semi-annually. The amount for an unexpired period of six months, and for a shorter period of time than six months, shall be payable upon the collection of the stored object. The warehouse-keeper is entitled to be paid for storing the object even after the expiry of the contract if the depositor has failed to collect the stored object on time.

(4) Payment for storing the object shall include all the costs connected with the storage, however, it shall not include the cost of insurance. The warehouse-keeper is entitled to claim insurance only if the contract stipulates that the object must be insured.

#### **Section 532**

(1) If the storage of an object is agreed for a definite period of time, the depositor may collect the object prior to the expiry of the period, however, the depositor is to pay the amount agreed for the entire contractual period. Prior to the expiry of the agreed period, the depositor may request again for the object to be received for storage for the remaining time of the agreed period, the depositor is to compensate the warehouse-keeper for the costs so incurred.

(2) If the contract fails to include the period of time for which the contract is concluded, it shall be presumed that it is concluded for an indefinite period of time. The depositor may request at any time the release of the stored object and must pay storage for the actual storage period when collecting the stored object. The contract is terminated upon the collection of the stored object.

(3) The warehouse-keeper is entitled to terminate the contract by giving one month's notice. The notice commences on the first day of the month following the month in which the notice was delivered to the depositor.

#### **Section 533**

(1) The warehouse-keeper is liable for any damage which occurs to the stored object from the time of its receipt until its release, unless such damage could not be prevented despite providing all expert care.

(2) The warehouse-keeper shall not be liable for damage to the stored subject if such damage is caused by:

- a) the depositor or by the owner of the object,
- b) a defect or by the natural property of the stored object, or,
- c) defective packaging of which the warehouse-keeper informed the depositor when taking over the object for storage and this warning was noted in the warehouse-keeper's receipt, if the warehouse-keeper failed to inform the depositor of the defective packaging, the warehouse-keeper shall not be liable for the damage only if the defect was not discernible.

(3) If the damage occurs in the manner stipulated in subsection 2 above, the warehouse-keeper must provide professional care in order to minimize the damage.

#### **Section 534**

(1) The warehouse-keeper may withdraw from the contract if :

- a) the depositor has concealed the dangerous nature of the object which may cause considerable damage to the warehouse-keeper,
- b) the depositor is in arrears with paying storage for at least three months,
- c) substantial damage may occur to the stored object which the warehouse-keeper cannot prevent, or,
- d) the depositor fails to collect the object after the expiry of the period for which the warehouse-keeper is to store the object.

(2) Following a withdrawal from the contract, the warehouse-keeper may determine a reasonable time for the depositor to collect the object and warn the depositor that if he fails to collect the object, the warehouse-keeper will sell it. If the depositor fails to collect the object within the given period, the warehouse-keeper may sell the stored object in an advantageous manner at the

depositor's cost. The warehouse-keeper may deduct storage and costs - related to the sale - from the proceeds of the sale, and must refund the remaining amount to the depositor without undue delay.

#### **Section 535**

The warehouse-keeper has a lien over the stored objects while the objects are in his custody, which lien shall secure the warehouse-keeper's claims arising from the contract.

### **PART IX CONTRACT FOR WORK**

#### **1 FUNDAMENTAL PROVISIONS**

##### **Section 536**

(1) Under a contract for work, the contractor undertakes to carry out certain work and the employer undertakes to pay him a certain price for its execution.

(2) The assembly, maintenance, repair or modification of a certain object or another material result of performance shall be considered to be covered by a contract for work, unless included in a contract of sale (purchase). Work shall always be understood to mean the execution, assembly, maintenance, repair or modification of a construction (building) or its part.

(3) The price must be agreed in the contract, or the contract must at least stipulate the method of determining the price, unless the parties manifest their will to conclude such a contract without this determination.

#### **2 EXECUTION OF WORK**

##### **Section 537**

(1) The contractor shall execute the work at his account and at his own risk within the agreed period of time, otherwise within a reasonable period of time, with regard to the nature of the work. Unless the contract or the nature of the work implies otherwise, the contractor may execute the work prior to the agreed time limit.

(2) The employer is bound to take over the executed work.

(3) In executing the work, the contractor shall proceed independently and shall not be bound to follow the employer's instructions concerning the method of executing the work, unless he expressly undertook to follow them.

##### **Section 538**

The contractor may entrust another person with the execution of the work under such a contract, unless the contract or the nature of the work implies otherwise. However, if the work is executed by another person, the contractor shall bear liability, as if it were executed by him.

#### **3 MATERIALS AND ARTICLES FOR THE EXECUTION OF WORK**



#### **Section 539**

(1) The employer shall provide the contractor with those materials and articles which under the contract the employer has undertaken to provide for the execution of the work, the employer shall provide such materials and articles within the time stipulated in the contract, otherwise without undue delay following the conclusion of the contract. In case of doubt, it shall be presumed that the price for the execution of work shall not be reduced by the value of the materials and articles provided by the employer.

(2) If the employer fails to provide such materials and articles in time, the contractor may provide an additional period of time for the employer's fulfillment of this obligation, if the employer fails to fulfil it within the additional time, the contractor may order such materials and articles at the employer's account. The employer is bound to pay their price and the purposefully incurred costs related thereto - without undue delay - following the contractor's request to do so.

(3) The materials and articles which are necessary for the execution of the work and which the employer is not bound to provide, shall be provided by the contractor.

#### **Section 540**

(1) The employer shall bear the risk of damage to the materials and articles which he provided for the execution of the work and shall remain their owner until - by means of the contractor's performance - they shall become a component of the ordered work.

(2) The contractor shall be liable - to the same extent as a warehouse-keeper - for such materials and articles taken over from the employer for the purpose of their use during the execution of the work or for the purpose of repair or modification.

(3) After the completion of the work or after the termination of the obligation to execute the work, the contractor shall be bound - without undue delay - to return the materials and articles taken over from the employer, unless these were processed during the execution of the work.

#### **Section 541**

With regard to the materials and articles which the contractor provided for the execution of the work, the contractor shall have the status of the seller, unless the provisions regulating the contract for work provide otherwise, in case of doubt, it shall be presumed that the purchase price of such materials and articles is included in the price of the execution of the work.

### **4**

#### **OWNERSHIP RIGHTS TO THE OBJECT BEING MADE AND RISK OF DAMAGE**

#### **Section 542**

(1) If the contractor makes an object at the employer's premises, or on his site, or on a site provided by the employer, the employer shall bear the risk of damage to the object - being the owner of the object - unless the contract provides otherwise.

(2) In instances, to which subsection 1 above shall not apply, the contractor shall bear the risk of damage to the object being made and shall be considered its owner. The provisions which apply to the transfer of risk from the seller to the buyer shall apply *per analogiam* to the transfer of risk from the contractor to the employer.

(3) Neither the risk of damage, nor the title to the object, shall be transferred to the contractor, if the subject of the execution is its maintenance, repair or modification.

#### **Section 543**

(1) If the contractor bears the title to the object made, and the obligation to execute the work ceases due to reasons for which the employer is not liable, the employer shall be entitled to request that the contractor pay the price of the materials and articles which the employer provided to him and which contractor used during the execution of the work or which cannot be returned. The employer's rights to damage shall not hereby be affected.

(2) If the obligation to execute the work ceased for reasons for which the employer is responsible, then the employer shall be entitled to request compensation of the amount by which the contractor profited.

#### **Section 544**

(1) If the employer bears the title to the object being made (work executed) by the contractor and - due to its nature - it may not be returned or passed over to the contractor, the employer shall compensate the contractor the amount by which the employer profited from the contractor's performance if the obligation expired due to reasons for which the employer is not responsible.

(2) If the obligation concerning instances stipulated in subsection 1 above expired due to reasons for which the employer is responsible, the contractor may request compensation for such materials and articles which he purposefully provided and which have been included into the object made, unless the price of such materials and articles is included in contractor's claims under Section 548 subsection 2 below.

#### **Section 545**

The provisions referred to in Section 544 above shall apply *per analogiam* to such instances in which the subject of the work is the assembly, maintenance, repair or modification of a certain object.

### **5**

#### **PRICE**

#### **Section 546**

(1) The employer is bound to pay the contractor the price agreed in the contract or determined by the method stipulated in the contract. If the price is not agreed and cannot be determined in this manner, and the contract is still valid (Section 536 subsection 3 above), the employer shall pay the price which is usually paid for comparable work (object) and which would have been paid for comparable work under similar commercial terms at the time of the conclusion of the contract.

(2) The negotiation of the provision of an advance on the price of the work shall not affect the effects under Sections 548 and 549 below.

#### **Section 547**

#### **BUDGET PRICE**

(1) The amount of the price shall not be affected by the fact that the price was determined on the basis of a budget, which is a part of the contract, or by the budget of which the employer was informed by the contractor prior to concluding the contract.

(2) If the price was determined on the basis of a budget, but the contract implies that the entirety of the budget is not guaranteed, the contractor may demand a reasonable increase in the price - if

during the execution of the work - it becomes necessary to perform activities not calculated for in the budget and if such activities were unpredictable at the time of the conclusion of the contract.

(3) If the price was determined on the basis of a budget, which is not binding under the contract, the contractor may demand an increase in the price by the amount by which the costs purposefully spent by the contractor shall exceed the costs included in the budget.

(4) If the employer disagrees with the increase of the price, then the constructor shall submit a proposal to the court to determine the increase of the price.

(5) The employer may repudiate the contract without undue delay if, under subsections 2 and 3 above, the contractor demands an increase in the price by an amount exceeding 10% of the budget price. In this case the employer shall be bound to compensate the contractor the part of the price which corresponds to the extent of the partially executed work on the basis of the budget.

(6) The contractor's right to determine an increase in the price under subsections 2 and 3 above shall expire if the contractor fails to inform the employer of the necessity to exceed the budget price and of the proposed amount by which the budget price is to be exceeded, without undue delay, once it becomes obvious that exceeding the budget price is unavoidable.

#### **Section 548**

(1) The employer shall be bound to pay the contractor the price within the period agreed in the contract. Unless the contract or law provides otherwise, the entitlement to the payment shall arise upon the execution of the work.

(2) If the contractor repudiates the contract due to the employer's delay, and an obstacle preventing the employer's performance does not constitute circumstances excluding responsibility (Section 374 above), the contractor shall be entitled to receive the price stated in the contract. However, the amount, which the contractor has saved by not fully executing the contracted work, shall be deducted from that price.

#### **Section 549**

(1) If, following the conclusion of the contract, the parties agree on restricting the extent of the work while failing to agree on its effects on the price, the employer is bound to pay a price reasonably decreased. If, similarly, the parties agree to extend the scope of the work, the employer shall pay a price reasonably increased.

(2) If, following the conclusion of the contract the parties agree on changing the work while failing to agree on its effects on the price, then the employer shall be bound to pay a price increased or decreased - while taking into account the difference in the extent of the necessary activities and the reasonable costs connected to the changed execution of the work.

### **6**

#### **MANNER OF EXECUTING THE WORK**

#### **Section 550**

The employer shall be entitled to control the execution of the work. If the employer ascertains that the contractor is executing the work contrary to his duties, the employer shall be entitled to demand that the defects - which arose due to the contractor's improper performance - be removed, and that the work be executed properly. If the contractor fails to remove the defects

within a reasonable period of time provided for this purpose by the employer and the contractor's conduct would undoubtedly lead to a fundamental breach of the contract (Section 345 subsection 2 above), then the employer shall be entitled to repudiate the contract.

#### **Section 551**

(1) The contractor shall inform the employer - without undue delay - of the unsuitable nature of the materials and articles handed over to him by the contractor, or of the unsuitability of the employer's instructions, if the employer could ascertain their unsuitability when exerting professional care. If the unsuitable materials and articles or the unsuitable instructions obstruct proper execution of the work, the contractor is bound to interrupt the execution of the work to the necessary extent until the unsuitable materials or articles are exchanged and the unsuitable instructions are corrected, or until receiving a written notification that the employer insist on using the provided materials or articles and on following the given instructions. The time stipulated for the completion of the work shall be extended by the period for which it was necessary to interrupt the execution of the work. The contractor shall also be entitled to the compensation of those costs incurred to him by the interruption of the work or by the use of the unsuitable materials or articles until their unsuitability could have been ascertained.

(2) The contractor, who fulfilled his obligation stipulated in subsection 1 above, shall not be liable for the impossibility of completing the work or defects in the completed work, caused by the defective materials or articles, or by the unsuitable instructions, provided that the employer insisted on their use (application) and confirmed this to the contractor in writing. If the work is incomplete, the contractor shall be entitled to the price decreased by the amount which he saved due to non-performance of the work to the full extent.

(3) The contractor, who failed to fulfil his duties stipulated in subsection 1 above, shall be liable for the defects in the work caused either by the use of unsuitable materials and articles provided by the employer, or by following the employer's instructions.

#### **Section 552**

(1) If, during the execution of the work, the contractor ascertains hidden obstacles in an object which is the subject of repair or modification, or the place where the work is to be executed, and these obstacles hinder the execution in the agreed manner, the contractor shall notify - without undue delay - the employer of such obstacles together with a proposed change in the work. Until reaching an agreement on the change in the work, the contractor shall be entitled to interrupt the execution of the work. If, within a reasonable period of time, the parties fail to agree on an amendment of the contract, either of the parties may repudiate it.

(2) If the contractor did not breach his duty to ascertain such obstacles, as stipulated in subsection 1 above, prior to starting the execution of work, neither of the parties shall be entitled to claim damages, the contractor shall be entitled to payment for that part of the executed work which was completed prior to the time when the obstacles could have been detected when exerting professional care.

#### **Section 553**

(1) If the contract stipulates that the employer is entitled to inspect the work at different stages of its execution, the contractor shall invite the employer in time to effect such an inspection.

(2) If the contractor fails to fulfil the duty stipulated in subsection 1 above, he shall be obliged to enable the employer to effect an inspection within an additional period of time and shall be liable

for the costs thus incurred.

(3) If the employer failed to attend the inspection, to which he was duly invited by the contractor, or which should have taken place in accordance with the agreed time-schedule, the contractor may continue execution of the work. However, if the employer's non-attendance was caused by an obstacle which he could not prevent, the employer may request - without undue delay - another inspection within an additional period of time. However, the employer shall compensate the contractor for the costs incurred by the delayed inspection.

## 7

### EXECUTION OF WORK

#### Section 554

(1) The contractor shall fulfil his duty to execute the work by its due competition and by handing over the object of the work to the employer at an agreed place, otherwise at the place stipulated by this Act. If the place of handing the work over is different than the place stipulated in subsections 2 and 4 below, the contractor shall invite the employer to take delivery of the work.

(2) If this place is not agreed upon and the contract includes the contractor's duty to dispatch the object of the work, the handing over of the object of the work shall be effected upon its handing over to the first carrier who is to arrange its delivery to the place of destination. The contractor shall enable the employer to exercise the rights arising from the contract of carriage unless the employer already has such rights on the basis of this contract.

(3) If the contract fails to stipulate the place of handing the work over, as well as the contractor's duty to dispatch the subject of the work, then the handing over shall be effected at the place stipulated as such place of the execution of work in the contract, if such place is not fixed in the contract, the handing over shall be effected at the place of which the employer knew or must have known at the time of the conclusion of the contract that it was the place where the contractor would execute the work.

(4) In instances to which the provisions of subsections 1 and 3 above shall not apply, the handing over shall be effected at the place where the contractor's registered office, place of business, residence, or organizational unit of business is stipulated, provided that he notifies the employer of the said place in time.

(5) The employer shall acquire the title to the object manufactured for him upon the handing over of the object if prior to its handing over the contractor had the title to that object, and the risk of damage to the object shall pass to the employer if prior to the handing over of the object it was borne by the contractor. The provisions of Sections 444 through 446, Sections 455 through 459 and Section 461 above shall apply *per analogiam*.

(6) If either one of the parties so requests, a protocol confirming the handing over of the object of the work shall be made and signed by the both parties.

#### Section 555

(1) If the contract does not stipulate the contractor's duty to dispatch the object of the work, the contractor shall fulfil his duty to execute the work if he enables the employer to dispose of the object of the work at the place referred to in Section 554 above. If the contractor's obligation also includes the assembly of the manufactured, repaired or modified object, the obligation shall be fulfilled when such an assembly is properly completed.

(2) If under the contract the proper execution of the work is to be verified by effecting agreed

tests, the work shall be presumed as completed only upon the successful execution of such tests. The contractor is bound to invite the employer in time to attend such tests.

(3) The absence of the employer at the tests, to the execution of which he was duly invited, shall not hinder the execution of such tests. The provisions referred to in Section 553 subsection 3 above, on the repetition of tests shall apply *per analogiam*.

(4) The results of the tests shall be entered into the protocol signed by both parties. If the employer is not present, then a trustworthy and impartial person, who attended the tests, shall sign the protocol on the employer's behalf.

#### Section 556

If the work involves results other than the manufacture of an object, or the assembly, maintenance, repair or modification of an object, the contractor is bound to proceed in the activity within the scope stipulated in the contract and with professional care in order to attain the materially stipulated result of the activity determined in the contract. The contractor is bound to pass over the materially embodied result to the employer.

#### Section 557

The contractor shall be entitled to pass over the result of the activity, which is the object of the work under Section 556 above, to a third party, provided that the contract so permits. If the contract does not comprise a ban on such a transfer, the contractor shall be entitled to this result as long as - owing to the nature of the work - this is not at variance with the interest of the employer.

#### Section 558

If the object of the work (under Section 556 above) is a result, which is protected within the intangible industrial or other intellectual property rights, the employer shall be entitled to use the result only for the purpose set forth in the concluded contract for work. The employer should be entitled to use such results for other purposes only with the consent of the contractor.

#### Section 559

The contractor shall be responsible for the infringement of another party's industrial intangible rights or other intellectual property rights as a result of the utilization (application) of the object of his work if such infringement occurs under Slovak law or under the law of the country in which the result of the work is to be utilized, and the contractor was aware of this at the time of the conclusion of the contract. The provisions referred to in Sections 434 and 435 above shall apply, *mutatis mutandis*.

## 8

### DEFECTS

#### Section 560

(1) The work (object) shall have defects if the execution of the work fails to correspond to the results determined in the contract.

(2) The contractor shall be liable for the defects which the work bears at the time of its handing over (Section 554 above), if, however, the risk of damage to the manufactured object passes to the employer later, the time when it passes to the employer shall be decisive. The contractor

shall be liable for the defective work which is covered by a guarantee of quality within the scope of such a guarantee.

(3) The contractor shall be liable for defects in the work, which arose after the time stipulated in subsection 2 above, if such defects were caused by the breach of the contractor's duties.

(4) If the contract for work comprises the manufacturing of an object, the provisions of Sections 420 through 422 and Section 426 above shall apply *per analogiam*.

#### **Section 561**

The contractor shall not be liable for defects in the objects (work) if such defects were caused by the utilization of materials and articles provided for the processing (manufacturing) by the employer, and if even with professional care he was unable to detect the unsuitability of the said materials and articles, or if he had informed the employer of them and the employer had insisted on their use. The contractor shall similarly not be liable for defects caused by the following of unsuitable instructions given to him by the employer, provided that the contractor had informed the employer of their unsuitability and the employer had insisted on their abiding by them, or if the contractor could not have detected their unsuitability.

#### **Section 562**

(1) The employer is bound to inspect the work (the object) or to arrange for its inspection as soon as possible after it has been handed over.

(2) The courts shall not assert the employer's rights arising from the defects in the work (object) if the employer fails to notify the defects:

- a) without undue delay after they have been ascertained,
- b) without undue delay after he should have ascertained them when exerting professional care during the inspection under subsection 1 above,
- c) without undue delay after they may have been ascertained at a later date when exerting professional care, however, at the latest within two years, and if it concerns buildings, within five years from handing over the work (object). As regards defects to which a guarantee applies, the guarantee period shall be effective instead of the above mentioned terms.

(3) The provisions referred to in Section 428 subsections 2 and 3 above shall apply *per analogiam* to the effects mentioned in subsection 2 above.

#### **Section 563**

(1) The guarantee period related to the work shall commence on the day when the work (object) is handed over.

(2) The provisions referred to in Sections 429 through 431 above shall apply, *mutatis mutandis*, to the guarantee of quality of the work (object).

#### **Section 564**

The provisions referred to in Sections 436 through 441 above shall apply, *mutatis mutandis*, to defects in the work (object). The employer shall not be entitled to demand the execution of substitute work if the object of the work - owing to the nature of such work (object) - cannot be returned or handed over to the contractor.

#### **Section 565**

If the employer exercises the right - under the provisions referred to in Section 564 above to repudiate the contract concerning such work (object) which cannot be returned or handed over to the contractor, the provisions of Section 441 above shall not be applicable. The employer shall not be entitled to repudiate the contract if he failed to duly notify the contractor of the defects in the work (object).

### **PART X MANDATE**

#### **Section 566**

(1) Mandate is a contract under which the mandatory undertakes either to arrange a certain business matter by effecting certain legal acts in the name of and at the account of the mandator (mandant), or to arrange another matter at the mandator's request, and mandator undertakes to pay him certain remuneration for his services.

(2) If the mandatory's business (professional) activities include making such arrangements, it shall be presumed that some remuneration has been agreed.

#### **Section 567**

(1) The mandatory is bound to proceed with professional care when arranging a certain matter on the mandator's behalf.

(2) The mandatory is bound to perform the activity which he has undertaken to conduct in accordance with the mandator's instructions and interests, of which the mandatory is aware or must be aware. The mandatory is bound to inform the mandator of all circumstances which he has ascertained while arranging the matter and which may result in a change of the mandator's instructions.

(3) The mandatory may depart from the mandator's instructions only if it is necessary and in the interest of the mandator, and if it is impossible to receive the mandator's approval in time. However, even in such a case, the mandatory shall not be allowed to depart from the mandator's instructions, if it is prohibited by the mandate or by the mandator.

#### **Section 568**

(1) The mandatory is bound to arrange an agreed matter personally, only if it is stipulated in the mandate. If the mandatory breaches this duty, he shall be liable for any damage thus caused the mandator.

(2) The mandator is bound to hand over to the mandatory all that is necessary for performing the latter's obligation to arrange a certain matter, unless it ensues from that matter that the mandatory shall obtain what is necessary himself.

(3) If arrangements of a certain matter require effecting legal acts in the name of the mandator, the mandator is bound to grant in time a written power of attorney to the mandatory.

(4) If a power of attorney is not included in the mandate, the mandatory's assumption of the obligation ensuing from the mandate - to act in the name of the mandator - shall not substitute a power of attorney even in the case in which the person, with whom the mandatory negotiates, is aware of the mandatory's obligation under the mandate.

#### **Section 569**

The mandatory shall return to the mandator - without undue delay - such objects which he has

taken over from him when arranging matters on his behalf.

#### **Section 570**

The mandatory is liable for any damage caused to the objects taken over from the mandator in connection with arranging a certain matter on the mandator's behalf, and for any damage caused to those objects taken over from third persons on the mandator's behalf, unless it was impossible to prevent such damage in spite of having exerted professional care. The mandatory is bound to have such objects insured at the mandator's account only if the mandate so stipulates, or if the mandator so requests.

#### **Section 571**

(1) If the mandate fails to stipulate the amount of remuneration to be paid to the mandatory, the mandator shall pay the mandatory an amount which is customary for such performance - similar to that undertaken by the mandatory on the mandator's behalf - at the time of the conclusion of the mandate contract.

(2) Unless the mandate provides otherwise, the mandatory shall be entitled to his remuneration once he has duly conducted the activity stipulated in the mandate, regardless as to whether it has led to the expected result or not. If it may be expected that - in connection with arranging a certain matter on the mandator's behalf - substantial expenses will be incurred, the mandatory may request an appropriate advance payment.

#### **Section 572**

The mandator is bound to reimburse the mandatory all expenses which the mandatory necessarily and purposefully incurred when performing his obligation, unless it ensues from the nature of such expenses that they are included in the mandatory's remuneration.

#### **Section 573**

The mandatory shall not be liable for the breaching of an obligation by another person with whom he has concluded a contract concerning the arrangements of a certain matter, unless he has guaranteed in the mandate the performance of obligations assumed by other person in connection with arranging the matter.

#### **Section 574**

- (1) The mandator may repudiate the mandate partly, or fully, at any time.
- (2) Unless the term of notice provides otherwise, the notice shall take effects as of the day on which the mandatory has learned of it, or as of the day on which he could have learned of it.
- (3) The mandatory is bound to discontinue the performance of the obligation to which the notice applies. However, the mandatory must warn the mandator of all measures, which must be taken in order to prevent any immediate threat of damage ensuing from the mandatory's incomplete performance related to arranging a certain matter.
- (4) The mandatory is entitled to compensation of expenses (Section 572 above) and to a proportionate part of remuneration for the duly rendered services prior to the day when the notice comes into effect.

#### **Section 575**

- (1) The mandatory may repudiate the mandate, and the repudiation shall take effect at the end of

the month following the month in which such notice was delivered to the mandator, unless a later date ensues from the notice.

(2) The mandatory's obligation to perform activities on behalf of the mandator shall expire on the day the notice becomes effective. If the mandator might incur damage due to the discontinuation of a certain activity (activities), the mandatory must inform the mandator of the measures that must be taken in order to prevent such damage. If the mandator cannot take such measures even by means of other persons, and if he asks the mandatory to effect them himself, the mandatory is bound to do so.

(3) If the mandatory is an individual, his obligation shall expire upon his death, if the mandatory is a legal entity, the obligation shall expire upon the entity's deletion from the Companies Register.

(4) As regards the performance of activities between the day on which the notice is given and its day of effectiveness, the mandatory is entitled both to claim expenses (as under Section 572 above), and to a partial remuneration corresponding to the result attained in arranging the matter ensuing from the mandate.

#### **Section 576**

The provisions of Sections 567 through 575 above shall apply, *mutatis mutandis*, also to other cases concerning the duty to arrange a certain matter at someone else's account under other provisions of this Act, unless these other provisions imply otherwise.

### **PART XI CONTRACT WITH A COMMISSION AGENT (MERCHANT)**

#### **Section 577 FUNDAMENTAL PROVISIONS**

Under a contract with a commission agent (merchant), the commission agent undertakes to conduct in his own name but at the account of the principal, a certain business affair for the latter, and the principal undertakes to pay the commission agent a remuneration (commission).

#### **Section 578**

- (1) The commission agent is bound to negotiate the affairs with professional care in accordance with the principal's instructions.
- (2) He may depart from the principal's instructions only if it is in the interest of the principal and if he is unable to obtain the latter's consent in time. If the commission agent breaches this duty, the principal shall not have to recognize the results of such negotiations as having been made at his account, provided that the principal rejected the binding nature of such negotiations - which apply to him - without undue delay, after having learned of the contents of the negotiations.

#### **Section 579**

- (1) The commission agent must protect the principal's interest which are known to him, and keep the latter well informed of all the circumstances which may lead to a change in the principal's instructions. The commission agent is bound to arrange insurance only if it is stipulated in the contract, or if the principal has given him such instructions, the insurance would be effected at the principal's account.
- (2) The commission agent shall inform the principal of the negotiations in the manner stipulated

in the contract, otherwise as requested by the principal.

#### **Section 580**

(1) Unless the contract provides otherwise, the commission agent is bound to make use of other persons to perform his obligations arising from the contract with the principal, if he is unable to perform his obligations himself.

(2) If the commission agent makes use of other persons to perform in his stead, he shall still be liable for their performance as if he negotiated the affair himself.

#### **Section 581**

No rights and duties shall arise to the principal out of the commission agent's relations to third persons. The principal may, however, claim directly from a third person the delivery of an object or the performance of an obligation, which the commission agent has arranged for him, if the commission agent cannot do so himself due to circumstances concerning his person.

#### **Section 582**

The principal may claim from the commission agent the performance of an obligation of a third party without this third party's performance of an obligation to the commission agent, only if the commission agent has assumed such an obligation in writing, or if he committed a breach of the principal's instructions regarding the party with which the contract should have been concluded at the principal's account. In such an event, the provisions on suretyship shall appropriately apply.

#### **Section 583**

(1) The principal shall remain the owner of movables, which were entrusted to the commission agent for sale, until the title to them passes to a third party. The title to movables obtained for the principal by the commission agent shall be acquired by the principal at the time when such movables are passed over to the commission agent.

(2) The commission agent is liable for damage incurred to the objects stipulated in subsection 1 above for which the commission agent is liable in accordance with the provisions on a contract of storage.

#### **Section 584**

(1) Following the arrangement (execution) of a certain affair, the commission agent must provide the principal with a report of the results of the arrangements made, and account for it.

(2) In the report, the commission agent shall name the person with whom the contract was concluded. If he fails to do so, the principal shall be entitled to exercise - against the commission agent - the right to claim the performance of the obligations arising from the contract.

#### **Section 585**

The commission agent is bound - without undue delay - to transfer to the principal the rights acquired when arranging affairs on his behalf and to pass over to him all that he has thus acquired, and the principal is bound to take them over.

#### **Section 586**

If the person with whom the commission agent concluded a contract on the principal's behalf

breaches his obligations, the commission agent is bound to demand the fulfillment of the obligations from this person at the principal's account, or if the principal agrees, to transfer to him the claims related to these obligations.

#### **Section 587**

(1) If the amount of the commission is not determined in the contract, the commission agent shall be entitled to a commission corresponding to his activities and to the results attained with regard to the remuneration which was usually provided for similar activities at the time of the conclusion of the contract.

(2) The commission agent shall be entitled to remuneration as soon as he fulfils the duties referred to in Sections 584 through 586 above.

#### **Section 588**

Together with the commission, the principal is bound to compensate the commission agent for all necessary and purposefully incurred costs connected with the fulfillment of his obligation on behalf of the principal. In case of doubt, it shall be presumed that the commission also includes compensation for such costs.

#### **Section 589**

The provisions of Sections 574 through 575 above shall apply *per analogiam* to a contract with a commission agent.

#### **Section 590**

If the commission agent's performance is on a long-lasting nature, the provisions on the contract on business agency shall apply, *mutatis mutandis*, to the relationship between the principal and the commission agent.

## **PART XII INSPECTION CONTRACT**

### **Section 591 FUNDAMENTAL PROVISIONS**

Under an inspection contract, the inspector undertakes to ascertain impartially the state of a certain object or to verify the results of a specific performance and to issue a certificate on inspection to that effect, and the client undertakes to pay him remuneration for his services.

#### **Section 592**

(1) The inspector is bound to effect the inspection impartially and to record the ascertained state in the certificate of inspection.

(2) The provisions of the contract which determine the inspector's duties which may influence the impartial execution of the inspection, or the correctness of the certificate, shall be void.

#### **Section 593**

The inspector is bound to execute the inspection with professional care with regard to the determined method of inspection, and to the place, time and extent of the inspection, as well as to the state of the object under inspection at the time of its execution.

#### **Section 594**

(1) The inspector shall effect the inspection to the extent and in the manner determined in the contract, otherwise to the extent and in the manner customary for similar inspections.

(2) Unless the contract provides otherwise, it shall be presumed that the inspection is to be effected - without undue delay - at the place where the object of the inspection is located. If the contract fails to stipulate where the object which is subject to the inspection is located, the client shall be obliged to advise the inspector in time of the timing and the place where the inspection is to be effected.

#### **Section 595**

(1) The inspector shall be entitled to a certain remuneration for fulfilling the duty to effect the inspection and to issue a certificate of inspection.

(2) If the remuneration is not agreed, the client shall pay the remuneration common at the time of the conclusion of the contract with regard to the object, scope, method, and place of the inspection.

(3) In addition to the remuneration, the client must compensate the inspector for the necessary and reasonably incurred expenses which arose from the performance of the inspection, unless it ensues from their nature that they are included in the remuneration.

#### **Section 596**

The client shall co-operate with the inspector in the manner necessary for the effecting of the inspection, in particular, the client shall facilitate the inspector's access to the object of the inspection.

#### **Section 597**

The execution of the inspection shall not affect legal relations between the client and other persons, in particular, those persons to whom the object of the inspection is to be provided or those who provided the object of the inspection.

#### **Section 598**

If the inspector failed to duly execute the inspection, he shall not be entitled to remuneration and compensation of expenses (Section 595 above) and, on the expiry of the period of time stipulated for the execution of the inspection, the client may repudiate the contract.

#### **Section 599**

The inspector shall be obliged to compensate damage caused by the breach of duty to duly execute the inspection, only if such damage cannot be substituted by the client's claim against the person liable for the defective fulfillment concerning the object of the inspection. However, the client cannot claim compensation for what he failed to notify, or to demand in time, against the person liable for the defective performance of the inspection, or what the client cannot claim due to an agreement concluded with such a person if that agreement excludes claims of such kind following the execution of the inspection.

#### **Section 600**

If the inspector is bound to compensate the damage under Section 599 above, then upon payment

of such damage the inspector shall assume the client's claims towards the third party liable for the defective performance concerning the object of the inspection, as if the claims were transferred to him.

### **PART XIII FORWARDING CONTRACT**

#### **Section 601 FUNDAMENTAL PROVISIONS**

(1) Under forwarding contract, the forwarding agent undertakes to arrange for the principal the transport of an object (the consignment) in his own name but at the principal's account from a certain place (the place of dispatch) to another certain place (the place of destination), and the principal undertakes to pay remuneration to the forwarding agent.

(2) The forwarding agent is entitled to ask for a written forwarding order if the contract is not in writing.

#### **Section 602**

(1) The forwarding agent is bound to fulfil the instructions of the principal within the scope of the contract. The forwarding agent shall warn the principal of any obvious unsuitability of his instructions. If the forwarding agent fails to receive the necessary instruction from the principal, he shall be obliged to ask the principal to supplement them. However, if the danger of delay arises, the forwarding agent shall be bound to proceed even without such instructions, on order to protect - as much as possible - the principal's interests either ensuing from the contract or from his instructions, or which are otherwise known to the forwarding agent.

(2) If the contract stipulates that prior to handing over the consignment, or the documents which enable the disposal of the consignment, the forwarding agent shall collect a certain monetary amount from the consignee, or shall perform another act of collection, then the provisions on documentary bank collection, referred to in Section 697 et seq. below, shall apply, *mutatis mutandis*.

#### **Section 603**

(1) In fulfilling the obligation, the forwarding agent is to proceed with professional care when negotiating the method and conditions of transportation that suit the principal's interests the best, which ensue from the contract and the principal's instructions, or which are otherwise known to the forwarding agent.

(2) The forwarding agent shall be liable for damage which occurs to the consignment during the transportation, unless he could not prevent the damage - in spite of exerting professional care.

(3) The forwarding agent shall be obliged to insure the consignment only if the contract so stipulates.

#### **Section 604**

The principal shall provide the forwarding agent with the correct data about the contents of the consignment and its nature, as well as with other facts required for the conclusion of a forwarding contract, the principal shall be liable for damage which occurs to the forwarding agent due to the breach of this duty.

#### **Section 605**

- (1) If it is not at variance with the contract, or if the principal does not prohibit it at the latest prior to commencing the forwarding, then the forwarding agent may effect the transport, which he should otherwise arrange himself.
- (2) If the forwarding agent uses another forwarding party (the intermediate forwarding agent) to arrange the transportation, he shall be liable as if the transportation were arranged by him.

#### **Section 606**

- (1) The forwarding agent is bound to inform the principal if the consignment is under the threat of damage, or of damage which has occurred to the consignment, as soon as he learns of it, otherwise, he shall be liable for the damage thus occurred to the principal due to the non-fulfillment of his duty.
- (2) If the consignment is under the threat of an imminent loss and there is no time to seek the principal's instructions, or if the principal is in delay in providing such instructions, the forwarding agent may sell the consignment in an appropriate manner at the principal's account.

#### **Section 607**

- (1) The forwarding agent shall be entitled to an agreed remuneration, or - if it is not agreed - to the remuneration common at the time of the conclusion of the contract for arranging similar transportation. In addition, the forwarding agent shall be entitled to compensation for necessary and reasonable expenses incurred to the forwarding agent for the purpose of fulfilling his obligation. In addition to this, the forwarding agent shall be entitled to compensation for expenses which were reasonably incurred to him while performing his obligation.
- (2) The principal shall provide the forwarding agent with a reasonable advance to cover the costs connected with the performance of his obligation, and shall do so prior to the commencement of the forwarding agent's performance.
- (3) The principal shall pay the forwarding agent the remuneration and expenses incurred to the latter, without undue delay, after the forwarding agent has concluded the necessary contracts with the carriers, or with intermediary forwarding agents, and has informed the principal accordingly.

#### **Section 608**

The forwarding agent shall have a statutory lien on the consignment as security for his claims as long as the consignment is in his custody.

#### **Section 609**

The provisions stipulated for contracts with commission agents (merchants) shall supportively apply to the forwarding contracts.

### **PART XIV CONTRACT OF CARRIAGE**

#### **Section 610 FUNDAMENTAL PROVISIONS**

Under a contract of carriage, the carrier undertakes to carry an object (the consignment) for the consignor from a certain place (the place of dispatch) to another place (the place of destination),

and the consignor undertakes to pay remuneration (a carriage fee) to the carrier.

#### **Section 611**

- (1) The carrier is entitled to demand from the consignor a written confirmation of the other to carry (the consignment note) and the consignor is entitled to ask for a written confirmation of the receipt of the consignment.
- (2) If a special documentation is required for executing the carriage, the consignor must hand over such documentation to the carrier upon the latter's request together with the consignment. The consignor is liable for damage caused to the carrier for the failure to hand over such documentation or for errors in the documentation.
- (3) Unless the contract implies otherwise, the contract shall be discharged if the consignor fails to ask the carrier to receive (take over) the consignment within the period of time stipulated in the contract, otherwise, within six months of the contract's conclusion.

#### **Section 612**

- (1) Under the contract, the carrier may be obliged to issue a bill of lading to the consignor on taking the consignment over.
- (2) The bill of lading is a negotiable instrument and incorporates the right to demand the handing over of the consignment from the carrier in accordance with the contents of the bill of lading. The carrier is bound to hand over the consignment to the person authorized to take it over under the bill of lading, if such a person presents the bill of lading and confirms on it the receipt of the consignment.

#### **Section 613**

- (1) The bill of lading may be issued to a bearer, or to a certain designated person, or to such a person's order.
- (2) The rights of a bill of lading issued to a bearer shall be transferred by the handing over of the bill of lading to a person designated to acquire those rights. The rights of a bill of lading issued in the name shall be transferable in accordance with the provisions stipulating the assignment of a debt (claim). The person, to whose order the bill of lading is issued, shall be entitled to transfer the rights under such a bill of lading by endorsement, either by a filled in, or blank, endorsement. If the bill of lading fails to indicate to whose order it has been issued, it shall apply that it has been issued to the order of the consignor.

#### **Section 614**

- (1) The carrier shall provide the following details in the bill of lading,
  - a) the name and the registered office of the legal entity, or the name and the place of business, alternatively the residence of the individual, being the carrier,
  - b) the name and the registered office of the legal entity, or the name and the place of business, alternatively the residence of the individual, being the consignor,
  - c) the designation of the consignment,
  - d) Information as to whether the bill of lading has been issued to such a person's order,
  - e) the place of destination,
  - f) the place and date of the issue of the bill of lading and the signature of the carrier.
- (2) If the bill of lading is provided in several copies, the number of copies must be indicated on each one of them. The remaining copies shall become void following the delivery of the



consignment of the entitled person who has presented one copy of the bill of lading.

#### **Section 615**

In the case of destruction or loss of a bill of lading, the carrier shall be obliged to issue to the consignor a new bill of lading which must state that it is a substitute bill of lading. In the case of the misuse of the original bill of lading, the consignor shall be obliged to compensate the carrier for the damage so incurred.

#### **Section 616**

The contents of the bill of lading shall be decisive for the claims of persons entitled under the bill of lading. The carrier may apply to them the provisions of the contract concluded with the consignor only if these are included in the bill of lading or if expressly referred to therein. The carrier may raise - against a person entitled under a bill of lading - such objections which arise from the contents of the bill of lading, or from the relationship between the carrier towards such an entitled person. The provisions of Section 627 below shall not hereby be affected.

#### **Section 617**

(1) The carrier is bound to carry consignment to the place of destination with professional care and within the stipulated period of time, otherwise without undue delay. In case of doubt, the term shall commence the day after the handing over of the consignment to the carrier.

(2) If the carrier knows the consignee, the carrier is bound to deliver the consignment to him, unless the contract stipulates that the consignee is to pick up the consignment in a specific place, in which case the carrier shall advise him of the arrival of the consignment.

#### **Section 618**

(1) Prior to the delivery of the consignment to the consignee, the consignor is entitled to demand that the carriage be interrupted and the consignment returned to him, or be disposed of in another manner, at the same time the consignor undertakes to compensate all purposefully incurred costs thus caused to the carrier. If, however, a bill of lading was issued, the consignor may demand this only on the basis of the bill of lading. If the bill of lading has been handed over to the person entitled to demand delivery of the consignment, such instructions may be given only by this person. If more copies of the bill of lading are outstanding, the presentation of all copies shall be required.

(2) If the contract of carriage stipulates that the carrier shall collect a certain amount of money, or shall effect another act of collection, then the provisions on a bank documentary collection shall apply, *mutatis mutandis*, (Section 697 et seq. below).

#### **Section 619**

If the consignee is stipulated in the contract, this consignee shall acquire the rights arising from the contract when he demands the handing over of the consignment on its delivery to the place of destination, or after the elapse of the time when it should have arrived there. At that moment, the claims also applying to damage to the consignment are transferred to the consignee. However, the carrier shall not hand over the consignment to the consignee if this is at variance with the instructions given to the carrier by the consignor under Section 618 above. In this case it shall be the consignor who shall henceforth be entitled to dispose of the consignment. If consignor determines to the carrier another person as the consignee, this person shall acquire the

rights from the contract as the original consignee.

#### **Section 620**

(1) If a bill of lading has been issued, the person entitled to such delivery in accordance with the bill of lading shall have the right to demand the delivery of the consignment. The following constitute qualified persons:

- a) under a bill of lading issued to a designated person, the person indicated therein,
- b) under a bill of lading issued to the order of a person, the person indicated therein provided it was not transferred by endorsement, or if the bill of lading has been thus endorsed, the person mentioned at last in an uninterrupted sequence of endorsements, or with the last endorsement being blank, its bearer,
- c) under a bill of lading issued to a bearer, its bearer.

(2) The obligations of the carrier under the contract of carriage shall be discharged if the carrier delivers the consignment in good faith to the person who acquired the bill of lading under an endorsement, even if the rights ensuing from the contract of carriage have not been transferred to this person. The provisions on bills of exchange shall apply to endorsements *per analogiam*.

#### **Section 621**

The carrier may perform the obligation by using the service of another carrier in order to effect the carriage, and if he does so, he shall still be liable as if he had effected the carriage himself.

#### **Section 622**

(1) The carrier shall be liable for the damage which occurred to the consignment if it occurred after its transfer to the carrier and prior to the delivery to the consignee, unless the carrier could not have prevented it by effecting professional care.

(2) However, the carrier shall not be liable for the damage which occurred to the consignment, if he proves that it was caused by:

- a) the consignor, the consignee, or the owner of the consignment,
- b) a defect or the natural properties of the consignment, including usual wastage, or,
- c) the defective packaging which the carrier drew the consignor's attention to when receiving the consignment for carriage, and if a bill of lading was issued, this defect in packaging was recorded therein, if the carrier failed to draw the consignor's attention to the defective packaging, he shall not be liable for the damage which occurred to the consignment due to a defect in packaging which was undetectable when the consignment was handed over.

(3) If damage occurs to the consignment under subsection 2 above, the carrier shall exercise professional care to minimize the damage.

(4) The provisions of the contract, which limit the carrier's liability stipulated in subsections 1 through 3 above, shall be void.

#### **Section 623**

(1) The carrier is bound to inform the consignor immediately of damage to the consignment prior to its delivery to the consignee. If the consignee has already acquired the right to the consignment, then the carrier is bound to inform the consignee. The carrier shall be liable for damage caused either to the consignor, or to the consignee by breaching this duty.

(2) If the consignment is under an imminent threat of substantial damage and there is no time to seek the consignor's instructions, or if the consignor delays with such instructions, the carrier

may sell the consignment in an appropriate manner at the consignor's account.

#### **Section 624**

- (1) If the consignment is lost or destroyed, the carrier is bound to pay the price which the consignment had at the time when it was passed on the carrier.
- (2) If the consignment is damaged or depreciated, the carrier is bound to pay the difference between the price which the consignment had when taken over by the carrier and the price of the damaged or depreciated consignment.

#### **Section 625**

- (1) The carrier is entitled to an agreed amount of remuneration, or, if no remuneration has been agreed upon, then the carrier is entitled to a remuneration customary at the time of conclusion of the contract with regard to the contents of the carrier's obligation.
- (2) The carrier is entitled to remuneration after having completed the carriage to the place of destination, unless the contract stipulates another time as decisive for such an entitlement.
- (3) If the carrier cannot accomplish the carriage due to the circumstances - for which he is not liable - he shall be entitled to the payment of partial remuneration with regard to the effected carriage.

#### **Section 626**

The consignor shall provide the carrier with the correct information about the contents and nature of the consignment, and shall be liable for any damage caused to the carrier by the breach of this duty.

#### **Section 627**

By taking delivery of the consignment, the consignee shall assume liability for the settlement of the carrier's claims arising from the contract of carriage of the handed-over consignment against the consignor - provided that he knew or must have known of these claims.

#### **Section 628**

The carrier shall have a right of lien on the consignment as security for his claims arising from the contract as long as the carrier may dispose of the consignment.

#### **Section 629**

The implementing regulations may provide different stipulations for carriage by rail, by air, by road, inland river carriage and carriage by sea with regards to the formation of a contract, transport documents, the ban on objects for carriage, taking over the consignment by the carrier and taking delivery by the consignee, the scope of claims against the carrier and their application. However, such regulations may not limit the carrier's liability if the consignment suffered from damage - referred to in Sections 622 and 624 above.

### **PART XV**

## **CONTRACT ON THE LEASE OF A MEANS OF TRANSPORT**

### **Section 630 FUNDAMENTAL PROVISIONS**

- (1) Under a contract on the lease of a means of transport, the lessor undertakes to allow the lessee the temporary use of a means of transport, and the lessee undertakes to pay the lessor a remuneration (hire).
- (2) The contract must be in writing.

#### **Section 631**

- (1) The lessor must provide the lessee with the determined means of transport together with the necessary documentation within the time stipulated in the contract, otherwise without undue delay following the conclusion of the contract, The determined means of transport must be fit for operation and for the use specified in the contract, otherwise for the use which such a means of transport is commonly used for.
- (2) The lessor is liable for any damage caused to the lessee if the leased means of transport is not fit for the purpose as stipulated in subsection 1 above. The lessor's liability shall be released if he proves that he could not have discovered or anticipated - while exercising professional care - the lack of fitness of the means of transport in question prior to the lessee's taking over this means of transport.

#### **Section 632**

- (1) The lessee is entitled to use the hired means of transport for purposes referred to in Section 631 subsection 1 above.
- (2) Unless the contract provides otherwise, the lessee may not enable another person to use the hired means of transport.
- (3) The lessee is bound to take care that the hired means of transport shall not suffer damage. The lessor is liable for damage, unless the damage is caused by the lessee or by person to whom the lessee enabled access to the hired means of transport. The lessee must have the hired means of transport insured only if this is stipulated in the contract.
- (4) The lessor's claim to damages in connection with the leased means of transport shall expire if the lessor fails to report and claim such damages from the lessee within six months following the return of the hired means of transport.

#### **Section 633**

- (1) The lessee shall maintain the hired means of transport at the lessor's account in the condition in which he took it over from the lessor with regard to its usual state of wear and tear.
- (2) The lessee must inform the lessor - without undue delay - of the required repairs which the lessee is bound to execute (subsection 1 above). If the lessee fails to fulfil this duty, he shall lose the right to claim compensation for the repair costs, however, he may ask the lessor for the amount by which the lessor profited from such a repair.
- (3) The lessee must exercise the right to claim the costs under subsection 1 above against the lessor within three months following the payment of such costs, if the lessee fails to do so, the right may not be asserted in judicial proceedings if the lessor rightfully objects that the right was not exercised in time.

#### **Section 634**

- (1) The lessee must pay the lessor the hire as agreed, otherwise the hire which was common at the time of the conclusion of the contract with regard to the nature of the hired means of transport and the determined manner of its use.

(2) Unless the contract stipulated otherwise, the lessee is bound to pay the hire after the time in which the hired means of transport was used. However, if the contract is concluded for a period longer than three months, then the hire shall be payable at the end of each calendar month in which the means of transport was used.

#### **Section 635**

(1) The lessee shall not pay the hire for the period when he could not use the hired means of transport due to its unfitness, or its need of repair, unless this unfitness for use was caused by the lessee or a third party whose access to the means of transport was enabled by the lessee.

(2) If the lessee fails to inform the lessor of the impossibility of using the hired means of transport without undue delay, the lessee's obligation to pay the hire shall remain valid.

#### **Section 636**

(1) The right to use the hired means of transport shall cease on the expiry of the time for which the contract was concluded, or on the destruction of the hired means of transport.

(2) A contract on the lease of a means of transport which was concluded for an indefinite period of time may be terminated by giving notice.

(3) The notice shall take effect after the elapse of thirty days, unless the contract stipulates another period of time for giving notice, or, unless the notice stipulates a later date. The contract may also state that it may be terminated upon delivery of the notice.

#### **Section 637**

Upon the termination of the right to use a certain means of transport, the lessee must return the said means of transport to the place where the lessee took it over unless the contract provides otherwise.

### **PART XVI CONTRACT ON OPERATING A MEANS OF TRANSPORT**

#### **Section 638 FUNDAMENTAL PROVISIONS**

(1) Under a contract on operating a means of transport, the provider of a means of transport - the operator - undertakes to carry cargo specified by the client and for this purpose to effect one or more predetermined trips, or to effect trips for the client within an agreed period of time, and the client undertakes to pay the operator a remuneration - freight.

(2) The contract must be in writing.

#### **Section 639**

(1) The operator must make sure that the required means of transport shall be fit for the trips which are the subject of the contract, and that it can be used for the transportation stipulated in the contract. The provisions referred to in Section 631 above shall apply to the operator's liability *per analogiam*.

(2) The operator must provide the manpower, fuel and what is necessary for the agreed trips.

#### **Section 640**

The client who has agreed on the operation of a certain means of transport may assign his right - to demand the agreed operation of a certain means of transport - to another person.

#### **Section 641**

If, under the contract, the cargo to be transported shall be taken over for carriage - transportation - by a ship operator, the provisions on the contract of carriage shall apply, *mutatis mutandis*, for determining the rights and duties of the parties, provided that this is enabled by the nature of the contract on operating a means of transport in question.

### **PART XVII BROKERAGE CONTRACT**

#### **Section 642 FUNDAMENTAL PROVISIONS**

Under a brokerage contract, the broker undertakes to engage in activities aimed at enabling his client to conclude a contract with a third party, and the client undertakes to pay a remuneration (commission) to the broker for the negotiation.

#### **Section 643**

The broker is bound to advise the client without undue delay of such circumstances which are important for the client's decision-making on the conclusion of the negotiated contract, and the client is to keep the broker well advised of all facts which are decisive for the conclusion of the said contract.

#### **Section 644**

The broker is entitled to a commission on the conclusion of the contract which he has negotiated.

#### **Section 645**

If the brokerage contract implies that the broker is only obliged to provide an opportunity for the client to conclude a contract having certain contents with a third party, the broker shall be entitled to a commission on providing such an opportunity.

#### **Section 646**

If, under the brokerage contract, the broker shall be entitled to a commission only on a third party's fulfillment of an obligation arising from the negotiated contract, the broker shall be entitled to a commission also in the event that the obligation of the third party towards the client is discharged or is postponed due to a reason for which the client is responsible. If the broker's commission is to be calculated on the basis of the extent of that third party's performance, then even a non-rendered performance by the third party shall be included into such a calculation if such non-performance was due to a reason for which the client is responsible.

#### **Section 647**

(1) The broker is entitled to the agreed commission, otherwise to a commission common for negotiating similar contracts at the time of conclusion of the brokerage contract. The broker shall not be entitled to a commission if the contract with a third party was concluded without his assistance, or if at variance with the brokerage contract, he was also working for the third party

with which the negotiated contract was concluded.

(2) The broker shall be entitled to compensation of the costs connected with the negotiation only if expressly agreed in the contract, in case of doubt, it shall be presumed that the broker is only entitled to a commission.

#### **Section 648**

The broker shall be obliged to keep the documents acquired in relation to his brokerage activity for the needs of his client, and namely for such a period of time for which such documents may be important for the protection of the client's interests.

#### **Section 649**

(1) The broker shall not be liable for the performance of third persons with whom he negotiated the conclusion of the contract, however, the broker may not propose to the client to conclude a contract with a person of whom the broker knows, or must know that there is a reasonable doubt that such a person shall duly and in time perform obligations arising from the negotiated contract.

(2) If the client so requests, the broker is bound to inform the client about the credibility of the person proposed by the broker as a party with which the client should conclude a contract.

#### **Section 650**

The brokerage contract shall be discharged if the contract with the third party - which is the subject of the broker's activities - is not concluded within the period of time stipulated in the brokerage contract. If no time has thus been stipulated, any party may terminate the contract by notifying the other party.

#### **Section 651**

The broker's right to a commission shall not be hindered by the fact that only following the termination of the brokerage contract, the client concludes a contract with the third party (Section 644 above), or, that the third party fulfils the obligations of the contract towards the client (Section 646 above), to which the broker's previous activities applied.

### **PART XVIII BUSINESS AGENCY CONTRACT**

#### **Section 652 FUNDAMENTAL PROVISIONS**

(1) Under a business agency contract, the business agent acting as entrepreneur undertakes to take steps aimed towards the conclusion of certain types of contracts (hereinafter referred to only as "deals") or to negotiate and make deals on behalf of the principal and for its account, and the principal undertakes to pay to the business agent a commission.

(2) The following parties can not be appointed as business agents:

- a) a person, who as a body may undertake binding obligations on behalf of the principal,
- b) a partner or a member of a co-operative, who is authorized by the law to undertake binding obligations on behalf of the other partners or members (where the principal is a co-operative), or
- c) liquidator, receiver appointed within the framework of compulsory administration, trustee

in bankruptcy, special trustee or arrangement trustee of the principal.

(3) The provisions concerning the business agency shall not apply to parties operating on a stock or commodity exchange.

(4) The business agency contract must be made writing.

(5) Unless this Chapter provides otherwise, the provisions concerning the brokerage contract shall apply to the business agency.

#### **Section 653**

The business agent shall execute the activities stipulated in the business agency contract with all professional care within the determined area. Unless such an area is specified in the contract, it shall be presumed that the business agent shall perform his activities on the territory of the Slovak Republic.

#### **Section 654**

(1) The business agent shall look up parties which may be interested in concluding such deals as specified in the contract between the principal and the business agent.

(2) If the business agency contract stipulates that the business agent shall execute legal acts in the name of the principal, the rights and duties connected herewith shall be subject to the provision on the mandate.

(3) Without being given the power of attorney by the principal, the business agent shall not have the right to conclude on this principal's behalf business deals, to receive performance for him, or to execute other legal acts in the name of the principal.

#### **Section 655**

(1) The business agent shall perform its duties under Section 652 subsection 1 above with professional care and in good faith, shall bear in mind the principal's interests, act in compliance with its authorization and reasonable instructions of the principal and disclose to the principal any information, which are necessary and available.

(2) The business agent shall inform the principal of the situation on the market and of all the circumstances which are important for the principal's interests - in particular, for decision-making in connection with the conclusion of business deals.

(3) If the business agent is entitled to conclude business deals in the name of the principal - on the basis of the contract - the business agent is bound to conclude them only under such commercial terms as stipulated by the principal - unless the principal consents to another procedure.

(4) If the business agent is unable to perform his activities, he must inform the principal accordingly without undue delay.

#### **Section 655a**

(1) The principal shall act honestly and in good faith when dealing with the business agent. The duties of the principal include, but are not limited to the following:

- a) disclose to the business agent the necessary information related to the subject matter of the deals, and
- b) procure for the business agent the information, which is strictly necessary for the fulfillment of the duties arising out of the agreements, in particular to give to the business agent a reasonable notice of its expectations of a material downfall of the business with respect to

what the business agent would expect under normal circumstances.

- (2) The principal shall give to the business agent a reasonable notice of the fact that it accepted, rejected or failed to perform any deal procured by the business agent.

#### **Section 656**

The business agent shall also assist, within the scope of his obligation, in the implementation of the concluded deals - as instructed by the principal - and in the principal's interests which are, or must be, known to the business agent. The business agent shall particularly assist in resolving any discrepancies which have arisen from the concluded deals.

#### **Section 657**

Without the principal's consent, the business agent may not provide data - which he learns from the principal while executing his activities - to other parties, or, to use such information for his own benefit or for the benefit of other persons if at variance with the interests of the principal. This duty shall last even after the termination of the business agency contract.

#### **Section 658**

- (1) The business agent is bound to propose that business deals be concluded only with such persons who can be expected to fulfil their obligations.
- (2) The business agent shall be liable to his principal for the fulfillment of a third party's obligation arising from a contract concluded with the business agent's principal, or with the business agent on behalf of the principal, if the business agent expressly assumed such obligation in writing and if he is entitled to a special bonus for undertaking such a liability. In such a case, the business agent's rights and duties shall be subject to the provisions on suretyship.

#### **Section 659**

- (1) The business agent shall be entitled to the agreed upon commission or to a commission corresponding to the usage in that industry, depending on the place of performance of his duties and taking into account the type of deals contemplated in the agreement. The commission of the business agent may be based on the number or volume of the deals.
- (2) In addition to a commission, the business agent shall be entitled to compensation for the costs connected with his performance only if this has been agreed, and unless the contract implies otherwise, only if the business agent has been entitled to a commission from the deal to which such costs are related.
- (3) The business agent cannot claim his entitlement to a commission and the agreed compensation for costs if he acted - as a business agent or as a broker - for the party with which the principal has concluded the business deal.

#### **Section 659a**

The business agent shall be entitled to the commission for any deals made for the term of the agreement, provided that

- a) the deals were made as a result of involvement of the business agent,
- b) the deal was made with a third party, which was procured by the business agent prior to the making of the deal for the purpose of entering into deals of the kind.

#### **Section 659b**

The business agent shall not be entitled to the commission as provided in Section 659a above in case it is payable to the previous business agent and it would not be fair to split the commission between the two business agents taking into account the underlying circumstances.

#### **Section 660**

- (1) Unless the parties made an arrangement referred to in Section 661 below, the business agent shall be entitled to the commission when:
  - a) the principal fulfils its obligations arising out of the deal, or
  - b) the principal is obliged to fulfil its obligations arising out of a deal entered into with a third party, or
  - c) the third party fulfils its obligation arising out of the deal.
- (2) The entitlement to the commission shall not arise later than the time, when the third party fulfils or is obliged to fulfil its portion of the obligation, provided that the principal fulfils its portion thereof. However, if the third party should fulfil its obligation not earlier than six months from the date of the deal, the business agent shall be entitled to the commission following the conclusion of such a deal.
- (3) The commission shall not be due for payment later than the last day of the month following the last day of the quarter, in which the entitlement thereto arose.
- (4) Not later than the last day of the month following the last day of the quarter, in which the commission was due for payment the principal shall issue to the business agent (even if the business agent fails to request the same) a written statement showing the main items necessary for the calculation of the commission. The above does not affect the right of the business agent to ask from the principal information available thereto, which are necessary to check the calculation of the commission.
- (5) If the commission is calculated with reference to the performance by the third party, then also any performance, which was not make due to reasons for which the principal is responsible, shall be included in the calculation basis.

#### **Section 661**

If it ensues from the contract that the business agent is only bound to provide an opportunity for his principal to conclude a deal having certain contents with a third party, then the business agent shall be entitled to a commission on providing such an opportunity.

#### **Section 662**

- (1) The entitlement to the commission shall terminate if it is apparent that no deal will be entered into between the principal and the third party, while such a failure is not due to circumstances for which the principal is liable, unless the deal implies otherwise.
- (2) Any commission, which has been paid in the meantime, must be refunded if the entitlement thereto terminated pursuant to subsection 1 above.
- (3) The parties may agree to deviate from the termination of the entitlement to the commission pursuant to subsection 1 above, but only provided that this is to the benefit of the business agent.

#### **Section 663**

- (1) The principal shall provide his business agent with all documents and aids which are necessary for the performance of the business agent.

(2) The documents and aids, mentioned in subsection 1 above, shall remain to property of the principal, and the business agent is to return them on the termination of the contract unless they have been utilized - with regard to their nature - during the business agent's performance.

(3) The business agent must keep for his principal documents - acquired in connection with the business agent's activities for the principal - for as long as such documents may be important for the protection of the principal's interests.

#### **Section 664 NON-EXCLUSIVE REPRESENTATION**

Unless the contract implies otherwise, the principal may also authorize other persons to perform business agency upon which he has agreed with the business agent, and the business agent may conduct activities - which he is bound to do for the principal - also for other persons, or, to conclude deals which are the subject of business agency at his own account or at another person's account.

#### **EXCLUSIVE REPRESENTATION**

##### **Section 665**

If an exclusive representation has been agreed upon, the principal is bound not to appoint or to use another representative for the agreed scope of deals within the contractual area, and the business agent is bound not to represent another person, or to conclude deals at his own account or another person's account within the scope covered by the contract with the principal.

##### **Section 666**

The principal shall have the right to conclude deals in the contractual territory - for which an exclusive business agency is contracted - without mediation by his exclusive representative but he shall be bound to pay a commission from such deals as if his exclusive business agent had assisted him to conclude them.

#### **TERMINATION OF BUSINESS AGENCY**

##### **Section 667**

The duties of the business agent shall expire on the last day of the term, for which the contract was concluded. If following the expiration of the contract the parties keep following the contract, the same shall be deemed extended for indefinite term.

##### **Section 668**

(1) The contract shall be made for indefinite term if so provided in the contract or if it does not contain any provision concerning its term, unless the purpose of the contract implies a specific period.

(2) A contract made for indefinite term may be terminated by a notice given by any party.

(3) Unless the parties agree otherwise, the term of notice shall be one month if the notice is given prior to the first anniversary of the contract, or two months if the notice is given prior to the second anniversary of the contract, or three months if the notice is given on or after the third anniversary of the contract.

(4) If the parties agree terms of notice longer than in subsection 3 above, the term of notice

applicable to the principal shall not be shorter than the term of notice applicable to the business agent.

(5) Unless the contract implies otherwise, the term of notice shall expire on the last day of the respective calendar month.

(6) The provisions of subsections 2 through 5 above shall apply also to contracts for definite term, which were converted into contracts for indefinite term pursuant to Section 667 above, while the term of notice referred to in subsection 3 above shall be calculated taking into account the period, for which the contract was in force prior to its conversion into a contract for indefinite term.

##### **Section 668a**

The business agent shall be indemnified against any damage, which is due to the termination of the contract by the principal in the following instances:

- a) no commission was paid to the business agent, which is payable thereto in pursuance of Section 655 subsection 1 above, notwithstanding that his engagement brought about material benefits to the principal,
- b) the business agent was not refunded the expenses pursuant to Section 659 subsection 2 above.

##### **Section 669**

(1) In case of termination of the contract the business agent shall be entitled to a severance pay in the following instances:

- a) he procured new customers to the principal or materially developed the business with the existing customers and the principal enjoys material benefits ensuing from the business therewith, and
- b) the payment of the severance pay, taking into account all the underlying circumstances, including but not limited to the commission, which the business agent losses and which is due to the deals made with such customers, is fair. The circumstances above include also the use or waiver of the competitive clause pursuant to Section 672a below.

(2) The amount of the severance pay shall not exceed a reasonable yearly commission calculated from the average commissions received by the business agent in the course of the past five years. If the contract lasted for less than five years, the severance pay shall be calculated with reference to the average commissions for the entire term thereof.

(3) The awarding of the severance pay shall not affect the right of the business agent to claim indemnities pursuant to Section 668a above.

(4) The right to severance pay shall arise also if the contract is terminated due to the decease of the business agent.

(5) The entitlement of the business agent to a severance pay pursuant to subsection 1 above shall terminate if the business agent fails to advise the principal of its claims within one year from the date of termination of the contract.

##### **Section 669a**

There shall be no entitlement to a severance pay in the following circumstances:

- a) the principal withdraws from the contract due to a breach by the business agent, which entitles the principal to withdraw therefrom,
- b) the business agent terminated the contract and such a termination is not justified by

circumstances on the side of the principal or to the age, disability or disease or the business agent, and it is not possible to reasonably require from the business agent to resume his duties,

- c) the business agent assigns the rights and duties under the contract to a third party in agreement with the principal.

#### **Section 670**

If an exclusive representation was agreed upon for a definite period of time, any party may repudiate the contract by the procedure referred to in Section 668 subsection 3 above, if in the last twelve months the volume of business did not reach the sum stipulated in the representation contract, otherwise the sum corresponding to the situation on the market. The entitlement under Section 669 above shall still be due to the business agent even if the contract is repudiated by the principal in accordance with these provisions.

#### **Section 671**

Even following the termination of his rights pursuant to Section 668 and Section 670 above the business agent shall be entitled to a commission in the following instances:

- a) the deal was made mainly due to the efforts of the business agent within a reasonable period following the termination of the contract,
- b) in accordance with the terms set out in Section 659a above, an order of the third party was received by the principal or the business agent prior to the termination of the contract,
- c) the third party fulfilled its obligations only following the termination of the contract.

#### **Section 672**

(1) If the principal, who has agreed to have an exclusive business agent, uses the services of another business agent, the business agent is entitled to repudiate the contract.

(2) If the business agent, who has agreed to exclusively represent the principal, performs activities which are within the scope of his exclusive contract with the principal, also for other persons, the representative is entitled to repudiate the contract.

#### **Section 672a**

(1) The contract may contain a clause agreed in writing, according to which the business agent shall not be allowed, for a term, which may not be longer than two years from the date of termination of the contract, carry out, either for its own account or for the account of third parties, the activities, which were the subject matter of the agency or any other activity, which would compete with the business of the principal in a specific territory or with respect to a specific group of customers in such a territory.

(2) If there are any doubts, the court may restrict or declare null and void a competition clause, which restricts the business agent more than required by the need to reasonably protect the interests of the principal.

### **PART XIX SILENT PARTNERSHIP**

#### **Section 673 FUNDAMENTAL PROVISIONS**

(1) Under a contract on silent partnership, the silent partner undertakes to provide a certain contribution to an entrepreneur and thus participate in the latter's business, and the entrepreneur undertakes to pay a certain part of profits arising from the silent partner's ownership interest in the entrepreneur's business results.

(2) The contract must be in writing.

#### **Section 674**

(1) The object of contribution may either be a certain amount of money, a certain object, rights or another property value which may be utilized in business activities.

(2) The silent partner shall pass the object of contribution to the entrepreneur or to enable its utilization in business activities within the agreed period of time, otherwise without undue delay following the conclusion of the contract.

(3) Unless the contract provides otherwise, the entrepreneur shall become the owner of the objects taken over from the silent partner, with the exception of immovable assets. If the object of the silent partner's contribution is an immovable, the entrepreneur shall be entitled to its use for the duration of the contract. If the object of the silent partner's contribution is a right and the contract does not provide otherwise, the entrepreneur shall be entitled to exercise that right for the duration of the contract.

#### **Section 675**

(1) The silent partner shall be entitled to view any business documentation and accounting records concerning the business, in which the silent partner participates by its contribution according to the silent partnership contract.

(2) The entrepreneur shall disclose to the silent partner upon its request information concerning the business strategy for the coming period and the expected developments of the property and the finance related to the business, in which the silent partner participates by its contribution according to the silent partnership contract. The entrepreneur shall deliver to the silent partner upon its request a copy of the financial statements in case the law makes the entrepreneur obliged to have such financial statements audited by an auditor, and the annual report.

(3) Unless the contract between the entrepreneur and the silent partner provides for other terms of disclosure of information and documents referred to in subsection 2 above, the entrepreneur shall, upon request of the silent partner, send the requested information of copies of documents to the address designated by the silent partner at its own expense, otherwise it shall disclose the same in the place of its registered office.

#### **Section 676**

(1) The silent partner's share in the business results shall be determined on the basis of the ordinary financial statements.

(2) The silent partner's entitlement to receive a profit share commences within 30 days following the compiling of the ordinary financial statements. If an entrepreneur is a legal entity, the term commences only as of the approval of the ordinary financial statements in accordance with its by-laws, the memorandum of association, or law.

(3) The silent partner is not bound to return his profit share, once received, in the event of a later loss.

#### **Section 677**

(1) A share in the loss shall reduce the silent partner's contribution. The reduced amount of the silent partner's contribution shall be increased by the silent partner's profit share attained in the later years, the silent partner's entitlement to receive a profit share shall be constituted upon attaining the original amount of his contribution.

(2) The silent partner is not bound to supplement his contribution in the case of a loss made by the business, and participates in the loss only up to the amount of his contribution.

#### **Section 678**

(1) The rights and duties toward third persons arising from the business shall be borne by the entrepreneurs.

(2) However, the silent partner shall be liable for the entrepreneur's obligations:

- a) if his name is included in the entrepreneur's business name, or,
- b) if the silent partner declares to a person, with whom the entrepreneur negotiates the conclusion of a contract, than they undertake the business activities jointly.

#### **Section 679**

(1) The participation of the silent partner in the business shall expire:

- a) upon the elapse of time for which the silent partnership's contract was concluded,
- b) by giving notice, if the contract was not concluded for a definite period of time,
- c) if the silent partner's share in the loss of the business attains the amount of his contribution,
- d) upon ending the business activities, to which the silent partner's contract is related,
- e) upon declaring bankruptcy proceedings (order) on the entrepreneur's property, or upon rejecting a proposal to declare such bankruptcy proceedings due to lack of property.

(2) Unless the contract stipulates another term of notice, it shall be possible to give notice at the latest six months prior to the end of the calendar year.

#### **Section 680**

Within thirty days following the termination of the contract, the entrepreneur must return to the silent partner the contribution, either increased or decreased by his share in the business results.

#### **Section 681**

Unless the provisions of Sections 673 through 680 above imply otherwise, the silent partner's status - with regard to his contribution - shall correspond to that of the creditor with regard to his claim, however, the silent partner is not entitled to demand the return of his contribution prior to the termination of the contract.

### **PART XX LETTER OF CREDIT**

#### **Section 682 FUNDAMENTAL PROVISIONS**

(1) Under a contract on opening a letter of credit, the bank (banking institution) assumes the obligation to provide at the customer's request, and at his account, a certain fulfillment towards a third party (the beneficiary), provided that the beneficiary meets the stipulated conditions within a certain period of time, the customer undertakes to pay the bank for its services.

(2) The contract must be writing.

#### **Section 683**

(1) The bank, in accordance with the contract, shall notify in writing the beneficiary of the opening of a letter of credit to his benefit, at the same time advising the beneficiary of its contents. The advisory note on the letter of credit must specify the bank's obligation to render performance to the beneficiary, the validity of the letter of credit, and the conditions to be met by the beneficiary prior to the bank's obligation to render its fulfillment.

(2) The bank shall notify the beneficiary, as stipulated in subsection 1 above, without undue delay following the conclusion of the contract with the customer, unless the contract stipulates that the bank shall notify the beneficiary only upon the customer's request.

(3) The obligation of the bank towards the beneficiary is established by the notification mentioned in subsection 1 above.

(4) The customer's obligation towards the bank is established upon opening the letter of credit.

(5) The advisory note on the letter of credit may specify the bank's duty to pay a certain amount or to accept a bill of exchange.

#### **Section 684**

Unless a remuneration for opening a letter of credit has been agreed, the customer is bound to pay the bank the remuneration common at the time of the conclusion of the contract.

### **BANK'S RELATION TO THE BENEFICIARY**

#### **Section 685**

The bank's obligation arising from a certain letter of credit shall not be dependent on the legal relations between the customer and the beneficiary.

#### **Section 686**

(1) Unless an advisory note on a certain letter of credit stipulates that the letter of credit is revocable, the bank may change or cancel the letter of credit only with the consent of the beneficiary and of the customer.

(2) If an advisory note on a certain letter of credit stipulates that the letter of credit is revocable, the bank - in relation to the beneficiary - may change or cancel it prior to the time when the beneficiary meets the conditions stipulated in the advisory note on the letter of credit.

(3) A letter of credit may be changed or cancelled only in writing.

#### **Section 687**

(1) If the bank, which is bound to provide fulfillment from a certain irrevocable letter of credit, initiates its confirmation by another bank, then the beneficiary is entitled to demand the fulfillment from this other bank as soon as this bank has advised the beneficiary that it has confirmed the letter of credit in question. The bank, which has asked for the confirmation of the letter of credit, and the bank which has confirmed it, shall be liable towards the beneficiary jointly and severally.

(2) In order to change or cancel the letter of credit confirmed by another bank, the consent of the confirming bank shall also be required.

(3) If the bank, which has confirmed the letter of credit, rendered the performance to the beneficiary in accordance with the contents of the letter of credit, it shall be entitled to claim this



performance from the bank which has asked for the confirmation of that letter of credit.

#### **Section 688**

A bank, which merely notifies the beneficiary that another bank has opened for him a letter of credit, shall be liable for any damage arising from the incorrectness of such a notification, however, it shall not assume the obligation arising from the letter of credit.

### **DOCUMENTARY LETTER OF CREDIT**

#### **Section 689**

Under a documentary letter of credit, the bank assumes the obligation to provide performance to the beneficiary, provided that the documents specified in the advisory note on the letter of credit are duly presented within the validity of the letter of credit.

#### **Section 690**

(1) The bank is bound to check the consistency of presented documents and their contents with professional care and to see to it that they obviously correspond to the conditions stipulated in the advisory note on the letter of credit.

(2) The bank shall be liable for any damage caused to the customer as a result of loss, destruction or injury of the documents taken over from the beneficiary, unless it could not prevent such damage even while exerting professional care.

#### **Section 691**

### **OTHER TYPES OF LETTERS OF CREDIT**

The provisions of Section 689 and Section 690 above shall apply, *mutatis mutandis*, to other letters of credit under which it shall be possible to demand performance upon meeting other conditions than the presentation of certain documents.

### **PART XXI**

### **COLLECTION THROUGH A BANK**

#### **Section 692**

#### **FUNDAMENTAL PROVISIONS**

Under a contract concerning collection through a bank, the bank (banking institution) undertakes to arrange for the collection of a certain amount of money from a certain debtor or to perform another act related to collection.

#### **Section 693**

(1) Under a contract with the customer, the bank shall ask the debtor to pay a certain amount of money (debt) or shall execute another act required by the customer. If the debtor refuses to pay the required amount of money or to perform the required legal act, or if he fails to do so without undue delay, the bank shall inform the customer accordingly.

(2) In arranging the collection, the bank is bound to proceed with professional care in accordance with the customer's instructions, however, it shall not be liable if the collection fails to materialize.

#### **Section 694**

The bank is to pass over to the customer the amount of money (debt) or securities which the bank has collected on the customer's behalf without undue delay.

The bank shall be liable for any damage caused by loss, destruction or injury of such documents except when it could not prevent such damage even while exerting professional care.

#### **Section 695**

If, under the contract, the bank shall arrange for the collection through another bank determined by the customer, the collection shall be effected through this bank at the customer's account and risk.

#### **Section 696**

Unless the contract stipulates an agreed remuneration for effecting the collection, the customer shall pay the bank such remuneration which was common at the time of the conclusion of the contract.

### **DOCUMENTARY COLLECTION**

#### **Section 697**

Under a contract concerning documentary collection through a bank, the bank assumes the obligation towards the customer to deliver to a third party documents authorizing the holder to dispose of the goods or other documents, if a certain sum of money is paid upon their delivery or another act of collection is effected on that occasion.

#### **Section 698**

The bank is bound to take over the documents stipulated in the contract, and to take professional care of them.

#### **Section 699**

The provisions on the mandate shall be applicable to the rights and duties of the parties in a supportive manner.

### **PART XXII**

### **CONTRACT ON BANK DEPOSIT**

#### **Section 700**

#### **FUNDAMENTAL PROVISIONS**

Under a contract on bank deposit, the bank (bank institution) undertakes to receive certain choses, other than securities for safekeeping and administering them, and the depositor undertakes to pay a remuneration for such services.

#### **Section 701**

(1) The bank is bound to take over the object of deposit and by exerting professional care, to protect it from loss, destruction, damage or depreciation.

(2) If the amount of remuneration is not agreed, the bank shall be entitled to demand the remuneration common at the time of the conclusion of the contract.

#### **Section 702**

(1) With regard to the nature of the deposit, the bank shall effect, with professional care, all measures which are necessary for exercising and safeguarding the rights arising to the depositor from the object of the deposit; the bank shall pass to the depositor what it has acquired from exercising such rights without undue delay.

(2) The depositor is to provide the bank with the power of attorney required for the legal acts stipulated in subsection 1 above, and to compensate the costs incurred to the bank in connection with the fulfillment of such duties.

#### **Section 703**

The depositor is entitled to demand the return of the deposited object, or its part, at any time, and to deposit it again unless the contract expires in the meantime. After passing over the deposited object to the depositor - until its return to the bank - the bank shall not bear duties referred to in Section 701 and Section 702 above.

#### **Section 704**

The bank shall be liable for damage arising to the depositor as a result of loss, destruction, or injury of the deposit, unless the bank could not have prevented it even when exerting professional care.

#### **Section 705**

Both parties may repudiate the contract with immediate effect at any time. The contract shall similarly be terminated if the depositor has collected all things which were deposited without manifesting his will that the contract should continue.

#### **Section 706**

Following the termination of the contract, the bank shall return the object of deposit to the depositor and the depositor shall take it over without undue delay, and shall pay the remuneration owed to the bank for the period of the contract.

#### **Section 707**

Under a contract on bank deposit, the bank shall have the right of lien on the object of deposit in order to secure its rights arising from the contract as long as the deposit is in its custody.

### **PART XXIII CONTRACT ON CURRENT ACCOUNT**

#### **Section 708 FUNDAMENTAL PROVISIONS**

(1) Under a contract on current account, the bank undertakes to open for the customer (the holder of the account) a current account, in a certain currency, as of a certain date.

(2) The contract must be in writing.

#### **Section 709**

(1) The bank is bound to receive on the current account pecuniary deposits or payments, effected

to the benefit of the holder of the account, in the currency in which the account is held. The bank is bound to receive payments to current accounts, make payments from current accounts, and settle any payments, which have been made or received, in accordance with the current account agreement, and by the dates, and subject to other terms prescribed by the law for money transfers. Unless the order stipulates the time when such a payment is to be made, the bank is bound to effect the payment on the day on which the order was delivered to the bank.

(2) If one account is established for several persons, each of them shall have the status of the holder (owner) of the account.

#### **Section 710**

If the contract stipulates that the bank shall effect payment orders up to a certain amount, even if there is a lack of pecuniary means on the account, then following such a payment, the rights and duties of the parties shall be governed by the provision on contracts of credit (Section 497 et seq. above).

#### **Section 711**

(1) The bank is entitled to demand compensation for the costs related to the effecting of payments on and from the customer's account, and to utilize the pecuniary means to the customer's account for the set-off the related banking costs.

(2) The bank shall correct any incorrect calculations without undue delay, while the correction of any wrong settlement of payments must be made by the dates and subject to other terms prescribed by the law for money transfers. The rights to claim damages shall not hereby be affected.

#### **Section 712**

(1) The bank is bound to notify the holder of the account of any payments received or made thereby by the dates and subject to other terms prescribed by the law for money transfers.

(2) The holder of the account shall be entitled to request that the bank provide evidence of the effected payments.

#### **Section 713**

(1) The bank is bound to credit to the holder of the account the pecuniary means from the day on which the bank acquired the right to utilize them, and from that day the interest on the said pecuniary means shall be due to the holder of the account.

(2) The pecuniary means drawn by the holder of the account, in accordance with Section 709 above, shall be accounted by the bank on the day on which such pecuniary means were paid out, or on the day on which the payments were effected, and the bank shall not credit interest on the drawn amount for that day.

#### **Section 714**

(1) The bank shall pay interest on the balance of the account. The interest shall be payable at the end of each calendar quarter, unless the contract provides otherwise, and shall be credited to the current account.

(2) If the interest rate is not agreed upon in the contract, the bank is bound to pay the interest stipulated by law or with reference to the law, otherwise the interest common for accounts held under similar conditions.

#### **Section 715**

- (1) The holder of the account may repudiate the contract in writing at any time with an immediate effect.
- (2) The bank may repudiate the contract in writing, effective of the end of the calendar month following the month in which the notice was delivered to the holder of the account.
- (3) The bank shall pay out the remaining balance held on the current account to the holder of the account, or - if so instructed by the holder of the account - shall transfer the balance to another account with the same bank or another bank, after having deducted the costs thus incurred.
- (4) The bank must notify the holder of the account of the remaining balance on his account at the end of each calendar year without undue delay.

### **PART XXIV CONTRACT ON DEPOSIT ACCOUNT**

#### **Section 716 FUNDAMENTAL PROVISIONS**

- (1) Under a contract on a deposit account, the bank undertakes to open such an account for the holder in a certain currency and to pay interest on the pecuniary means held on that account, the holder of the account undertakes to deposit pecuniary means on the account and to enable the bank to use them.
- (2) If the currency is not stipulated in the contract, it shall be presumed that the account shall be opened in the Slovak currency.
- (3) The contract must be concluded in writing.

#### **Section 717**

- (1) If the holder of the account withdraws the pecuniary means from the account prior to the time stipulated in the contract, or - if such a time is not stipulated - prior to the elapse of the period of notice, the right to claim the interest shall either be extinguished or reduced in the manner stipulated in the contract. Unless the contract implies another period of effectiveness of the notice, the notice shall take effect three months from the day when the holder of the account dealers a written notice to the bank. It shall be possible to give notice with regard to a part of the deposit. The effects of the extinguishment or the reduction of the entitlement to the interest shall not apply to the interest on the amount for which the period of notice was not adhered to.
- (2) If the contract so stipulates, the holder of the account shall not be entitled to withdraw the pecuniary means from the account prior to the elapse of the period stipulated in subsection 1 above.

#### **Section 718**

- (1) The bank shall pay the interest rate stipulated in the contract, or if not agreed, the interest rate which is stipulated by law or with reference to the law, otherwise the interest rate which is common with regard to the period of time for which the pecuniary means were deposited on the account.
- (2) The interest shall be payable after the elapse of the time for which the pecuniary means were deposited on the account, or following effectiveness of the notice under Section 717 subsection 1 above.

If the deposit account was not opened for a definite period, or if it was opened for a period longer than one year, the interest shall be payable at the latest at the end of each calendar year.

- (3) If the pecuniary means are deposited on the account for a period longer than one year, the bank shall be bound to pay out the interest at the end of each calendar year if so requested by the holder of the account.
- (4) The interest shall be calculated as of the day on which the bank acquired the right to use the pecuniary means. The interest shall not be calculated for the day on which the holder of the account withdraws the pecuniary means.

#### **Section 719**

- (1) Following the elapse of the stipulated period, or, on the effectiveness of the notice under Section 717 subsection 1 above, the bank is bound to pay out the released pecuniary means to the holder of the account, or to transfer them to his account with another bank.
- (2) If the notice given under Section 717 subsection 1 above, applies only to a part of the pecuniary means held on the account, the effects stipulated in subsection 1 above shall apply to that part.

#### **Section 719a**

Unless Sections 716 through 719 provide otherwise, the provisions of this Act applicable to current account contracts shall apply to deposit account contracts and to the receipt of payment to deposit accounts, making of payments from deposit accounts, to the settlement of any payments, and to the correction of wrong settlement of payments, *mutatis mutandis*.

### **PART XXV TRAVELER'S CHEQUE**

#### **Section 720 FUNDAMENTAL PROVISIONS**

A traveler's check is a security which entitles its holder to receive payment of the amount of money indicated therein upon presentation for reimbursement, under the terms stipulated by the issuer of the traveler's check.

#### **Section 721**

The bank (banking institution) which issues a traveler's check shall honor it, or arrange for its payment.

#### **Section 722**

- (1) A traveler's check must provide the following details:
  - a) the designation „Traveler's Check“,
  - b) the order or promise to pay a certain amount of money to the entitled person,
  - c) the name of the issuer and his signature, or a proper substitution of such a signature.
- (2) If the traveler's check includes the order for payment, it must also include the designation of the person to whom the order is directed.
- (3) If the designation of the entitled person is not stipulated in the traveler's check, the reimbursement of such a check may be required by the person who presents it.
- (4) A traveler's check may be issued in a currency other than Slovak Crowns.

**Section 723**

(1) Upon presenting the traveler's check for payment, the payer is entitled to ask for the proof of the holder's identity and the holder's signature on the traveler's check.

(2) The reimbursement of the traveler's check must be confirmed by the signature of the entitled person therein.

**Section 724**

The legislation applicable to bills of exchange and checks shall not apply to traveler's checks.

**PART XXVI  
PROMISE OF INDEMNITY**

**Section 725  
FUNDAMENTAL PROVISIONS**

(1) Under a promise of indemnity, the promisor undertakes to pay indemnity to the promisee, if the promisee suffers damage in the course of his activities performed on the promisor's request without having such a duty to perform.

(2) A promise of indemnity must be in writing.

**Section 726**

(1) A promise of indemnity shall become binding upon being accepted by the promisee.

(2) The promisee shall perform the activities to which the indemnity relates and which are requested by the promisor only if he expressly undertook to do so.

**Section 727**

The promisor must compensate the promisee for all the costs incurred by the latter and indemnify him for any damage suffered by him in the course of his activities, requested by the promisor.

**Section 728**

The promisee must take - at the promisor's account - the timely measure required to prevent the damage or to minimize it as much as possible.

**CHAPTER THREE  
PROVISIONS ON LAW OF CONTRACT IN INTERNATIONAL TRADE**

**PART I  
SPHERE OF APPLICATION**

**Section 729**

The provisions of this Chapter shall apply - in addition to the other provisions of this Act - to the obligations, referred to in Sections 261 and 262 above, if one person (party), which participates in their formation, has the registered office, place of business, or residence in the territory of a country other than that of the other participants, provided that their relations are governed by Slovak legislation.

**PART II  
GENERAL PROVISIONS**

**Section 730  
COMMON PRACTISE**

Common business practice (usage), adhered to in a particular sphere of international trade as referred to in Section 264 above shall be taken into consideration.

**Section 731  
OFFICIAL LICENSES**

(1) The debtor is bound to duly apply for an export license, transit license or other official license, which is required for the fulfillment of his obligation at the place of performance.

(2) The creditor is bound to duly apply for an import license or other official license which is required for taking delivery at the stipulated place of performance.

(3) The duty under subsection 1 above shall arise if such licenses are required at the time of performance, irrespective of whether they were already required at the time of the conclusion of the contract.

(4) If the applicant's application for granting a license has been rightfully rejected, the effects of the impossibility of performance shall apply. The party which unsuccessfully applied for a license shall be bound to compensate damage caused by the extinguishment of the obligation to the other party, unless the contract included a clause causing the validity of the contract to be dependent on the provisions of such a license.

(5) The provisions referred to in Section 47 of the Civil Code shall not apply to the contractual relations regulated by this Chapter of the Code.

**Section 732  
CURRENCY OF PAYMENT OBLIGATION**

(1) The debtor shall be required to fulfil his payment obligation in the currency in which the payment obligation was agreed. If in doubt, the debtor is bound to pay damages in the same currency which he is bound to pay in the event of the breaching of the contract or the extinguishment of the obligation.

(2) If either the decisional law of a country in which the debtor has his registered office, place of business, or residence, or other decisional law prevents payment in the currency stipulated in subsection 1 above, the debtor is bound to compensate the damage which incurred to the creditor in another currency.

**Section 733  
CURRENCY CONVERSION**

If the financial fulfillment is agreed by the parties in a certain currency and the debtor, under the contract concluded with the creditor or under an international treaty or other legal provisions, is to perform his obligation in another currency, then the decisive factor shall be the middle exchange rate between those two currencies, valid at the time of the provision of the financial fulfillment at the place stipulated in the contract, otherwise at the place where the creditor has his registered office, place or business, or residence.

**Section 734**

### **COMMON PRICE OR REMUNERATION**

If this Act stipulates that the common price or remuneration shall be decisive for the amount of a payment obligation, then prices and remuneration common on the international market shall be taken into consideration.

#### **Section 735**

##### **DELAY IN FULFILMENT OF PAYMENT OBLIGATION**

In the event of a delay in the fulfillment of a payment obligation, interest from the amount in arrears shall be paid in the same currency as the payment obligation. The debtor shall be bound to pay interest from the sum in arrears and the interest shall be 1% higher than the interest determined under Section 502 above, while the decisive rate of interest shall be the rate stipulated or applied by banks when providing credit equivalent to the period for which the debtor is in delay - in the country where the debtor has his registered office, place of business, or residence.

#### **Section 736**

##### **CIRCUMSTANCES EXCLUDING RESPONSIBILITY**

Circumstances excluding responsibility shall not apply to the non-granting of an official license, which should be applied for under Section 731 above.

#### **Section 737**

(1) During the application of Section 381 below, the usual rate of profits, attained in the country where the entitled person has his registered office, place of business or residence, shall be taken into consideration.

(2) In applying the provisions of Section 470 above, the decisive price shall be the common (standard) price which is agreed at the place where the goods shall be delivered, or if there is no such price, then the common price at another comparable place, while bearing in mind the difference in transport costs.

#### **Section 738**

If a business agent has his registered office, place of business, or residence outside the territory of the Slovak Republic, then when applying the provisions of Section 653 above, the decisive factor shall be the country, in which the business agent has his registered office, place of business, or residence at the time of the conclusion of the business agency contract.

### **PART III SPECIFIC CLAUSES**

#### **1 BAN ON RE-EXPORT**

##### **Section 739**

If a contract of sale stipulates in writing that the buyer is banned from re-exporting the purchased goods, then the buyer shall be liable to the seller in the event that such goods were re-exported by any party from the stipulated area. The buyer shall be bound to compensate the seller for the damage caused by the breach of this obligation, irrespective of the fact that the goods were re-

exported by the buyer or by another party, and irrespective of whether the buyer has bound the additional acquirer of the goods not to re-export them.

#### **Section 740**

The buyer who has assumed the duty not to re-export the goods, shall be bound to prove - when requested by the seller - where the goods are or that they were consumed without having been re-exported.

#### **Section 741**

If it is doubtful from which territory the re-export is banned, then it shall be presumed that it is the territory of the country where the goods should have been dispatched in accordance with the contract of sale, otherwise the country, where the buyer has his registered office, place of business, or residence at the time of the dispatch of the goods.

### **2**

#### **RESTRAINT OF SALES**

##### **Section 742**

(1) Under a clause on the restraint of sales, the seller undertakes not to sell certain goods to certain customers or to a certain country, or to sell the goods in a limited extent or under the terms stipulated in the clause.

(2) Such a clause must be made in writing and its validity depends on the validity of the contract of sale in which it is included or to which it is related.

##### **Section 743**

Unless the purpose of the clause under Section 742 above is the fulfillment of duties stipulated by an international treaty, or the prevention of the breaching of intangible industrial rights or other intellectual rights, then the clause shall be extinguished if it is breached by the buyer, or at the latest, two years from the delivery of the goods.

### **3**

#### **THE CURRENCY CLAUSE**

##### **Section 744**

(1) If a contract stipulates that the contracted price or another payment obligation is understood to be at a certain rate of exchange of the currency in which the obligation is to be fulfilled (secured currency) and if after the conclusion of the contract the rates of exchange of both currencies change, then the debtor shall be bound to pay the amount either reduced or increased proportionately, so that the amount of the securing currency remains unchanged.

(2) If the contract does not specify which exchange rates are to be relevant, it shall be presumed that these shall be the official middle rates, valid in the country where the debtor has his registered office, place of business, or residence, at the time of the conclusion of the contract and at the time when the payment obligation is fulfilled.

(3) If the clause uses several currencies as securing currencies, then the average of the exchange rates between the secured currency and the securing currencies shall be applied, unless the clause implies otherwise.

4

**EXCLUSIVE SALE CONTRACT**

**Section 745**

**FUNDAMENTAL PROVISIONS**

(1) Under an exclusive sale contract, the supplier undertakes not to deliver the goods specified in the contract in a certain territory to a person other than the customer.

(2) If such a contract is not in writing, or if it fails to specify the territory of the goods to which it relates, then the contract is void.

**Section 746**

The supplier may not deliver the specified goods during the validity of the contract, either directly, or indirectly, to persons in the contractual territory other than to the exclusive customer designated in the exclusive sale contract, or to other persons designated therein. The exclusive sale contract shall not deprive the supplier of the right to publish his products and engage in market research in the contractual territory.

**Section 747**

Individual sales within the scope of the contract shall be concluded within the framework of an exclusive sale contract (arrangement). A certain part of the contents of such contracts may be agreed within the framework of the exclusive sale contract (arrangement).

**Section 748**

If the contract fails to stipulate the period of time for which it is concluded, it shall expire on the elapse of one year from its conclusion. If the contract implies that the contracting parties intended to conclude the contract for an indefinite period of time and failed to agree on the period of notice, then either party may give notice, which shall take effect at the end of the calendar month following the month in which the notice was delivered to the other party.

**Section 749**

(1) If the customer failed to adhere to the time-schedule of the supplies as provided for in the contract, or if he purchases the goods that are the object of the exclusive sale contract from another supplier, even though such a right is expressly reserved in the contract, the supplier may repudiate the contract.

(2) If the supplier delivers the goods to another customer, contrary to the terms of the exclusive sale contract, the exclusive customer may repudiate it.

5

**LINKED TRANSACTIONS**

**Section 750**

**INTERDEPENDENT CONTRACTS**

If it follows from the contract or from the circumstances under which the contract was concluded, which are known to both parties that the performance of this contract (principal contract) is dependent on the performance of another contract (the accessory contract), then it

shall be presumed that the performance of the accessory contract constitutes a condition suspending the validity of the principal contract. If the performance under the principal contract shall or should be effected in advance, the failure to perform the accessory contract shall have the effect of a resolatory condition.

**MULTILATERAL BARTER TRANSACTIONS**

**Section 751**

For the purpose of this Act, multilateral barter transactions shall mean such transaction where numerous persons conclude one or several interdependent contracts, under which reciprocal deliveries of the goods between the parties having their registered office, place of business, or residence in territories of different countries are to be effected, but the purchase price shall be settled only among those parties having their registered office, place of business, or residence in the territory of the same country.

**Section 752**

The relations arising from multilateral barter transactions shall be subject to the provisions relating to the contract of sale. Each party shall be entitled to the performance stipulated in the contract, in accordance with the provisions relating to the contracts for the benefit of third parties. However, the parties may not repudiate or change the contract without the consent of the party for whom the performance is determined.

**Section 753**

None of the parties to a multilateral barter transaction may postpone the delivery of the goods to a party which has the registered office, place of business or residence in the territory of another country only because another party having the registered office, place of business or residence in the territory of the same country failed to perform the obligations towards such a party.

**Section 754**

Parties to a multilateral barter transaction who have their registered office, place of business, or residence in the territory of the same country, shall be jointly and severally liable for the performance of the obligation of each one of them towards the parties who have their registered office, place of business, or residence in the territory of another country.

**Section 755**

A party to a multilateral barter transaction is not entitled to repudiate the contract when one of the other parties is in delay with the performance while another party has already performed its obligation, unless the party repudiating the contract shall compensate the damage caused to the party to which the performance was directed.

**TITLE FOUR**

**COMMON, INTERIM AND FINAL PROVISIONS**

**Section 756**

The provisions of this Act shall apply, provided that an international treaty (convention), which is binding on the Slovak Republic and which was promulgated in the Collection of Laws, does

not provide otherwise.

#### **Section 757**

The provisions of Section 373 et seq. above shall apply *per analogiam* to liability for damage caused by a breach of the contractual obligations stipulated by this Act.

#### **Section 758**

(1) In concluding contracts whose parties are only persons having their registered office, place of business, or residence in the territory of the Slovak Republic, the provisions of this Act shall apply to the determining of the prices or remuneration to be paid for the rendered performance only if such a manner of determining the prices or remuneration does not contradict the common binding provisions on prices. Otherwise, the prices or remuneration to be paid may be of the highest permissible level under the latter provisions.

(2) Prices, remuneration, and other pecuniary performances, which are the subject of the obligations arising from contracts to which this Act applies, and which are the subject of the provisions stipulated in subsection 1 above, shall be considered as prices under the said provisions.

#### **Section 759**

If a contract, whose parties have their registered office, place of business, residence, enterprise, or its organizational unit in the territory of the Slovak Republic, determines a quality of an object which is at variance with the stipulated legislation, the decisive factor shall be the provisions stipulating the permissible quality of such an object for use, this shall not apply, if it arises from the contract, or from a declaration of a party which is to acquire such an object, or from that party's business activities, that the said objects shall be exported.

#### **Section 760**

The provisions of this Act on contractual obligations, related to the assertion of a right in court, to judicial proceedings or to a judicial decision shall apply, *mutatis mutandis*, to the assertion of a right before arbitrators, to arbitration proceedings, or to an arbitration award, provided they are based on a valid arbitration agreement.

#### **Section 761**

(1) The right of state-owned organizations to manage state-owned property is subject to the existing regulations including Sections 64, 65 and Sections 72 through 74b) of the Economic Code until the adoption of new legislation by the Federal Assembly and the National Assembly.

**(Not effective – Act No. 278/1993 Coll.)**

(2) The provisions referred to in Sections 70 through 75a above shall apply *per analogiam* to the liquidation of legal entities other than business companies, provided that such legal entities have no successor-in-laws and the legislation governing them do not provide otherwise.

(3) The following provisions of this Act shall also apply to the liquidation of state enterprises: Section 71 subsections 3 through 6, Section 75 subsections 2 and 3 above, and also Section 75a.

#### **Section 762**

The provisions governing bank guarantees, contracts on opening letters of credit, contracts on collection through banks, contracts on bank deposit, contracts on current accounts, and contracts

on deposit accounts shall also apply to instances when not a bank, but another person so entitled, provides a bank guarantee and concludes any of the above mentioned contracts.

#### **Section 763**

(1) This Act shall apply to legal relations, which arise after the effective date of this Act. Legal relations which arose before the effective date of this Act, and the rights which ensue from such legal relations, as well as the rights which ensued from the liability for breaching obligations related to economic and other contracts, concluded prior to the effective date of this Act, shall be governed by the legislation, which applied to them prior to the effective date of this Act. However, contracts on current accounts, contracts on deposit accounts, contracts on the safekeeping of securities and other valuables shall be governed by this Act as of its effective date even if such contracts were concluded prior to that date.

(2) Time limits (periods of time) - which commenced prior to the effective date of this Act - shall be assessed, until their termination, under the legislation, which applied to them prior to the effective date of this Act. The same shall apply to time limits for asserting rights, which under the preceding paragraph are subject to previous legislation, if such time limits commence after the effective date of this Act.

#### **Section 763a**

##### **Transitory Provision concerning those Provisions, which are in Force since February 1, 2004**

Any rights arising out of the liability for the breach of obligations under contracts entered into prior to the effective date of this Act shall be governed by the hitherto existing legislation.

#### **Section 764**

(1) The legal nature of general commercial partnership, limited partnerships, limited liability companies, and joint-stock companies, which were established under the legislation in force prior to the effective date of this Act, shall be governed by the provisions of this Act as of its effective date.

(2) The provisions of such a memorandum of association, the memorandum of association, or the articles of association of partnerships and companies mentioned in subsection 1 above, which are in contrast with the compulsory provisions of this Act, shall become void as of the effective date of this Act. Partners or company bodies shall amend their memorandum of associations, memorandums of association, articles of association within one year from the effective date of this Act and shall send the amended documents to their Register Court. If they fail to do so, the Register Court shall notify them and provide them with an additional reasonable time to do so. In the event that they fail to act within such an additional period of time, the Court shall delete the company (partnership) and order its liquidation.

(3) Shares which were issued prior to the effective date of this Act and to which certain advantages are attached which are not permissible under this Act shall lose such advantages on the effective date of this Act.

#### **Section 765**

(1) Co-operatives - which were established prior to the effective date of this Act - shall be transformed either into companies (partnership) or into co-operatives under this Act according to the provisions of a special act.

2) Co-operatives transformed under subsection 1 above shall amend their by-laws within the time limit stipulated by the special Act referred to in subsection 1 above. Prior to the stipulated time limit, the transformed co-operatives shall submit their by-laws - amended under this Act - to their Register Court with a petition asking for the effecting of the necessary amendments in the entry in the Companies Register. Co-operatives shall also submit a copy of the minutes of the members' meeting which approved the amended by-laws. The entry in the Companies Register shall also include the amount of the reference capital and individual members' contributions in that capital. Upon the entry of such amendments into the Companies Register, the relevant co-operative shall be considered as a co-operative founders under this Act.

(3) The legal nature of the co-operatives stipulated in subsection 1 above, shall be subject to the legislation and by-laws which were valid prior to the effective date of this Act until the entry of the amendments - under subsection 2 above - into the Companies Register.

(4) If the co-operatives stipulated in subsection 1 above fail to apply for the effecting of the amendments in the Companies Register under subsection 2 above within the stipulated time-limit, and fail to do so even after a notification by the Court, the Court shall order their liquidation.

(5) The provisions of a special act - referred to in subsection 1 above - shall regulate the share of net business property of the co-operative and shall also apply to the determination of the share in the liquidation balance. If such distribution fails to be approved by the meeting of the entitled persons, the decisions on this matter shall be taken by the Court.

#### **Section 766**

(1) The founder of co-operative enterprises (under Act No. 162/1990 Coll. on Agricultural Co-operatives, Act No.176/1990 Coll. on Housing, Consumer, Producer and Other Co-operatives), the founders of enterprises attached to citizens' associations and their participants in joint enterprises (under the Economic Code) shall transform the stipulated enterprises into commercial companies (partnerships) or co-operatives under this Act - at the latest within one year from the effective date of this Act, or shall abolish them within this time-limit. If they fail to do so, the courts may order the liquidation of such enterprises even *ex officio*. The same shall also apply to partnerships limited by shares. The provision of Section 69 above shall apply, *mutatis mutandis*.

(2) The legal nature and the internal relations of the legal entities - stipulated in subsection 1 above - shall be governed by the previous legislation prior to their transformation into commercial companies (partnerships) or co-operatives, or until their abolishment.

(3) If the founder of the legal entities stipulated in subsection 1 above is a co-operative, the time limit stated in subsection 1 above shall commence on the effective date of a special act. (Section 765 subsection 1 above).

#### **Section 767**

(1) The liquidation of legal entities under Sections 764 through 766 above shall be effected under the provisions of this Act. The liquidation balance shall, however, be distributed in accordance with the previous legislation (provisions). by-laws, founders' deeds, memorandums of association, articles of association and other documents, if the distribution is not thereby regulated, the appropriate provisions of this Act - i.e. those whose contents resemble the liquidated entity most - shall apply.

(2) The existence of legal entities which conduct business activities and which are not referred to

in Sections 764 through 766 above, and which were established under the former legislation - prior to the effective date of this Act - shall remain unaffected by this Act. Their legal nature and internal legal relations are subject to the legislation under which they were established.

#### **Section 768**

(1) The entries made in the Companies Register under the legislation in force prior to the effective date of this Act, shall be deemed as entries made into the Companies Register under this Act.

(2) The legal entities which - under the provisions valid prior to the effective date of this Act - were registered in the Companies Register shall be incorporated into the (Companies Register, also referred to as the Trade register, or Business Register) on the effective date of this Act.

(3) The entries in the Companies Register, which are at variance with the provisions of this Act, must be amended in accordance with this Act within one year of its effective date. If an incorporated entity fails to do so, the courts shall invite such an entity to amend its entry and shall provide a reasonable time limit for such an amendment. This shall not apply to the legal entities referred to in Section 766 above.

(4) Legal entities or their organizational units - which are to be registered into the Companies Register under this Act, and which are not incorporated on the day this Act comes into effect - must file a request of registration within six months from the effective date of this Act.

#### **Section 768a**

(1) Limited liability companies established prior to January 1, 1997 shall be obliged to give a notice to the appropriate Registration Court, within six months of the effective date of this Act, whether they conduct business or not and if they ceased to do so, then they must take the measures towards the deletion of the company.

(2) Limited liability companies established prior to the effective date of this Act shall, within six months of the effective date of this Act, amend their memorandums of association and articles of association so that they are compatible with this Act.

#### **Section 768b**

(1) Joint stock companies shall harmonize the form and the shape of their shares with this Act not later than December 31, 1999. Those joint stock company, which are recorded in the Companies Register as of July 1, 1999, shall harmonize their articles of association with this Act by December 31, 1999. Any provisions of the articles of association, which are contrary to the provisions of this Act, will be null and void after the date above.

(2) The holders of registered paper shares shall, upon request of the company, notify to the latter all the data set out in Section 156 subsection 4 above without undue delay. The company will make payments of proceeds on shares to holders of registered paper shares only after having fulfilled the duty above.

(3) The joint stock company, which issued registered paper shares, must ensure that the list of shareholders contains all the data set out in Section 156 subsection 4 above and submit such a complete list to the Central Securities Depository not later than December 31, 1999. In case of breach of the above by the company, the court will order its dissolution and liquidation *ex officio*.

#### **Section 768c**



(1) Unless otherwise provided below, the provisions of this Act shall govern also any rights and duties arisen prior to January 1, 2002. Nevertheless, the establishment of such rights and duties, and any claims accrued therefrom prior to January 1, 2002 shall be governed by the hitherto existing legislation.

(2) Individuals having status of entrepreneurs, who have, as of January 1, 2002, the same name and surname as another entrepreneur in the same place of business, who was authorized to conduct business earlier, shall supplement their business names, by January 1, 2003, by an addendum related to the designation or type of business so that their business names are not confusing.

(3) In cases, in which this Act requires to register in the Companies Register data, which were not liable to their registration prior to January 1, 2002, the affected party shall file a request for the registration of such data not later than January 1, 2003, unless this Act provides otherwise. In case of default the provisions of Section 28b subsection 3 above shall apply.

(4) Full version of the establishment deed, memorandum of association or articles of association, which are to be filed into the Collection of Deeds under this Act, shall be filed into the Collection of Deeds by registered parties not later than December 31, 2002, unless this Act provides otherwise. In case of default the provisions of Section 28b subsection 3 above shall apply.

(5) Business documents prepared prior to January 1, 2002, which lack any of the essentials prescribed by this Act, may be used up to January 1, 2003.

(6) If a partnership or a company is established prior to January 1, 2002, the hitherto existing legislation shall apply up to the incorporation of the partnership or the company, unless the founders agree to proceed in accordance with this Act.

(7) If a decision to increase or to reduce the registered capital was taken prior to January 1, 2002, the hitherto existing legislation shall apply up to the registration of the increase or the reduction into the Companies Register, unless the general meeting decides, by January 1, 2003, to proceed pursuant to this Act. The decision above may be taken by the general meeting only prior to the date of filing of a request to register the increase or the reduction of the registered capital into the Companies Register by the partnership or the company.

(8) If a decision to change the corporate form or to wind-up a partnership or a company was taken prior to January 1, 2002, the hitherto existing legislation shall apply up to the registration of the changes into the Companies Register, unless the general meeting decides, by January 1, 2003, to proceed pursuant to this Act. The decision above may be taken by the general meeting only prior to the date of filing of a request to register the changes into the Companies Register by the partnership or the company. The reasons, which exclude the entitlement to file an action due to invalidity of a resolution of the general meeting, shall apply also to the decision to wind-up the partnership or the company without liquidation, which was taken prior to the effective date of this Act.

(9) If prior to January 1, 2002 the partnership or the company were served a notice of resignation pursuant to Section 66 subsection 1 above, the hitherto existing legislation shall apply.

(10) If prior to January 1, 2002 proceedings were commenced concerning the winding-up pursuant to Section 68 subsection 6 above, the court shall proceed pursuant to the hitherto existing legislation.

(11) The provisions of this Act concerning the form of the memorandum of association, founders' deed, establishment deed, articles of association and any amendments thereto, shall not apply to any memorandum of association, founders' deed, establishment deed, articles of

association and amendments thereto, which were agreed prior to January 1, 2002.

(12) The provisions of Section 120 subsection 2 and 3 above shall apply, starting from January 1, 2002, also to any ownership interests acquired by the company or by its controlled company prior to the effective date of this Act.

(13) If prior to January 1, 2002 proceedings referred to in Sections 131, 183 and 242 above were commenced, the court shall pursue such proceedings pursuant to the hitherto existing legislation.

(14) The partnerships and the companies shall be obliged to harmonize their memorandums of association and articles of association with this Act by January 1, 2003, unless the provisions of this Act imply otherwise. In case of default the court may order the winding-up and liquidation even *ex officio*. Any partner, member or shareholder, which abuses its status in the partnership or the company or which shall make the harmonization of the memorandum of association or the articles of association conditional upon unlawful benefits, due to which it frustrates the harmonization of the memorandum of association or the articles of association with the requirements of this Act, shall be liable towards the other partners, members, shareholders or creditors of the company for any damage, which they might suffer as a result thereof.

(15) Unless this Act provides otherwise, any provisions of the memorandum of association or the articles of association, which regulate the rights and duties of partners, members, shareholders or partnerships or companies in contrast with the mandatory provisions of this Act, shall be rescinded with effect from January 1, 2002.

(16) If a holder of a registered share requested the respective body of the company to give its approval with the transfer of the share prior to January 1, 2002 and the respective body fails to take a decision by April 1, 2002, the approval shall be deemed given.

(17) The hitherto existing employee shares shall cease to be a separate class of shares on the date, on which the general meeting decides to convert the same. The general meeting shall take the decision above not later than January 1, 2004. The hitherto existing legislation shall apply to the employee shares in the meantime.

(18) If the application of this Act results in a relation of controlling and controlled party between certain parties, although the parties did not have the status above according to the hitherto existing legislation, such parties shall harmonize their mutual relations with this Act by December 31, 2002. The controlled party shall transfer the ownership interest or the shares of the controlling party held thereby by December 31, 2002. In case of default the court may order the winding-up and liquidation even *ex officio*.

(19) If a general meeting was convened prior to January 1, 2002 for January 1, 2002 or a later date, the hitherto existing legislation shall apply to the convocation of the general meeting.

(20) The provisions of this Act concerning agreements on exercise of voting rights shall apply also to any agreements, which were entered into prior to January 1, 2002.

(21) The provisions of this Act concerning proof of exercise of due or professional diligence shall not apply to any conduct, which occurred prior to January 1, 2002.

(22) Unless the joint stock company decides that the shares issued thereby, which are regarded, as of January 1, 2002, as publicly negotiable securities pursuant to special legislation, cease to be publicly negotiable, such a company shall be treated as a public joint stock company up to April 1, 2002, even though the conditions set forth in Section 154 subsection 3 above are not satisfied. The provisions of Section 154 subsection 4 above shall hereby not be affected.

(23) Any business agency contracts entered into prior to January 1, 2002 shall be treated pursuant to the hitherto existing legislation. The rights and the duties of parties to such contracts shall be governed by this Act in cases, in which the law does not allow the parties to depart

therefrom.

(24) If as of January 1, 2002 an individual is the sole member in more than three limited liability companies or if a company with a sole member is the sole member in another limited liability company, its status must be harmonized with this Act by December 31, 2003. In case of default the court may order the winding-up and liquidation of all such companies even *ex officio*. The provisions of Section 68 subsections 7 and 8 above shall apply *mutatis mutandis*.

#### **Section 768d**

If a split of a partnership or a company is agreed prior to the effective date of this Act, while such a split should only be effective after the effective date of this Act, the liability of the successors shall be governed by this Act.

#### **Section 769**

The duty to publish the information, which is stipulated by this Act, shall be fulfilled by their publicizing in the Companies Information Bulletin.

#### **Section 770**

The Government of the Slovak Republic shall stipulate the method and conditions for the publicizing of information - which is required by this Act - by a Decree.

#### **Section 771**

The Government of the Slovak Republic shall issue the implementing regulations under Section 629 above.

#### **Section 771a**

The Ministry of Justice shall issue an implementing decree referred to in Section 75 subsection 7 above.

#### **Section 772**

The following legislation shall hereby be rescinded:

1. Section 352 of the Civil Code No. 141/1950 Coll. of L.,
2. the International Trade Code No. 101/1963 Coll. of L.,
3. the Economic Code No. 109/1964 Coll. of L. in the wording of Act No.82/1966 Coll. of L., Legal Measure No.13/1967 Coll. of L., Act No.69/1967 Coll. of L., Act No. 72/1970 Coll. of L., Act No.138/1970 Coll. of L., Act No. 144/1975 Coll. of L., Act No. 165/1982 Coll. of L., Act No. 98/1988 Coll. of L., and Act No. 103/1990 Coll. of L.,
4. the Enterprise with Foreign Property Participation Act No. 173/1988 Coll. of L. in the wording of Act No. 112/1990 Coll. of L.,
5. the Act on National Economic Planning No. 67/1989 Coll. of L.,
6. the Joint-Stock Companies Act No. 104/1990 Coll. of L.,
7. the Act on Agricultural Co-operatives No. 162/1990 Coll. of L.,
8. the Act on Housing, Consumer, Producer and Other Co-operatives No. 176/1990 Coll. of L.,
9. Section 1 subsection 2, Section 3 subsection 2 and Section 4 of the Act on Auctions other than Distraintment No. 174/1950 Coll. of L.,
10. The Act on Economic Relations with Foreign Countries No.42/1980 Coll. of L., with the exception of the provisions referred to in Sections 2, 3, 13 through 16, Section 17 subsection 2c),

Section 18 subsection 1, Section 19 subsection 1i), Section 22j), Sections 43 through 56, Sections 58 and 64,

11. Section 13 subsection 1, Section 16 subsection 3 of the Act on Assembly of Citizens No. 83/1990 Coll. of L.,

12. the Federal Government Order on the Obligatory Negotiations of Supplier -Consumer Relations and the Binding Effects of the State Plan concerning certain Supplies No. 81/1989 Coll. of L.,

13. the Federal Government Order No. 256/1990 Coll. of L., which lists the import and export of certain objects and activities for which a foreign trading license (authorization) is required,

14. the Federal Government Order No. 132/1991 Coll. of L., which stipulates when a Joint-Venture Entity may be established without an authorization (license),

15. the Decree of the Ministry of National Defense No. 118/1964 Coll. of L., which stipulates the fundamental conditions for the supply of products and the provisions of the results of research for the defense of the state, in the wording of Decree No. 144/1989 Coll. of L.,

16. the Decree of Ministries of General Engineering and Heavy Engineering No. 135/1964 Coll. of L., which stipulates the fundamental conditions for the supply of engineering products, in the wording of Decree No. 57/1972 Coll. of L., No. 107/1981 Coll. of L., and No. 28/1990 Coll. of L.,

17. the Decree of the Ministry of General Engineering No. 136/1964 Coll. of L., which stipulates the fundamental conditions for the provisions for the provision of supplies for repairs of general engineering products, in the wording of Decree No. 27/1990 Coll. of L.,

18. The Decree of the Ministry of General Engineering No. 137/1964 Coll. of L., which states the fundamental conditions for the supply of repairs of road transport vehicles, in the wording of the Federal Government Order No.38/1966 Coll. of L. and Decree No. 26/1990 Coll. of L.,

19. the Decree of the Public administration of Material Reserves No. 174/1964 Coll. of L., which stipulates the fundamental conditions for the supply of state reserves in the wording of Decree No. 181/1989 Coll. of L.,

20. the Decree of the State Commission for Technology, and the Ministry of Finance and the State Arbitration No.87/1966 Coll. of L. on some economic measures for contribution construction in the wording of the Government Order No. 136/1973 Coll. of L.,

21. the Decree of the Ministry of Agriculture and Food and the Ministry of Forestry and Water Economy No. 73/1967 Coll. of L., which stipulates the fundamental conditions for the supplies for repairs of agricultural and forestry mechanical means, filed and earth-moving work, chemical and other agricultural work in the wording of Decree No. 147/1989 Coll. of L.,

22. the Decree of the Ministries of Chemical Industry, Construction, Consumer Industry, Heavy Industry, and foreign Trade No. 187/1968 Coll. of L., which stipulates guarantee period for supplies used for the construction of housing buildings,

23. the Decree of the Federal Ministry of Transport No. 152/1971 Coll. of L., on the economic obligations in road transport

24. the Decree of the Federal Ministry of Transport No. 156/1971 Coll. of L., on the economic obligations of inland water freight transport,

25. the Decree of the Czechoslovak State Bank's chairman and the Federal Ministry of Finance No. 118/1972 Coll. of L., on the deposit procedures in socialist organizations,

26. the Decree of the Federal Ministry of Technical and Contribution Development No. 101/1973 Coll. of L. on project competition, in the wording of Decree No 124/1991 Coll. of L.

27. the Decree of the State Arbitration No. 104/1973 Coll. of L., stipulating the fundamental

conditions for the supply of construction work,  
28. the Decree of the Federal Ministry of Technical and Contribution Development and the State Arbitration No. 77/1977 Coll. of L., on the centralized regulation of products and materials in construction,  
29. the Decree of the Federal Ministry of Metallurgy and Heavy Engineering No. 82/1977 Coll. of L., stipulating the fundamental conditions for the supply of metallurgical products, ores, magnesite products and metal wastage, in the wording of Decree No. 30/1990 Coll. of L.,  
30. the Decree of the Federal Ministry of Fuel and Energy No. 106/1977 Coll. of L., stipulating the fundamental conditions for the supply of solid fuels, in the wording of Decree No. 1/1987 Coll. of L., and Decree No. 3/1990 Coll. of L.,  
31. the Decree of State Arbitration No. 44/1978 Coll. of L., stipulating the fundamental conditions for the supply of chemical industry products, in the wording of Decree No. 26/1982 Coll. of L. and No. 12/1988 Coll. of L.,  
32. the Decree of the Federal Ministry of Agriculture and Food No. 84/1978 Coll. of L., stipulating the fundamental conditions for the supply of repairs to agricultural machinery, in the wording of Decree No. 148/1989 Coll. of L.,  
33. the Decree of the Federal Ministry of Transport No. 1/1980 Coll. of L., stipulating the fundamental conditions for the supply of aviation work in the agriculture, forestry, and water economy, in the wording of Decree No. 37/1990 Coll. of L.,  
34. the Decree of the State Arbitration No. 28/1980 Coll. of L., stipulating the fundamental conditions for the supply of polygraphic products, in the wording of Decree No. 199/1980 Coll. of L.,  
35. the Decree of the State Arbitration No. 38/1980 Coll. of L., which stipulates the fundamental conditions for the supply of products from distribution organizations of internal trade, in the wording of Decree No. 200/1989 Coll. of L.,  
36. the Decree of the Federal Ministry of Foreign Trade No. 61/1980 Coll. of L., on the establishment and activities of Czechoslovak legal entities' subsidiaries in foreign countries,  
37. the Decree of the Federal Ministry of Foreign Trade No. 62/1980 Coll. of L., on the control of foreign trade activities,  
38. the Decree of the Federal Ministry of Foreign Trade and the Federal Ministry of Technical and Contribution Development No. 64/1980 Coll. of L., on the procedures concerning intangible industrial rights and know-how in relation to foreign countries,  
39. the Decree of the Federal Ministry of Foreign Trade No. 140/1980 Coll. of L., on the preventive control of exported and imported goods and on the use and utilization of imported goods,  
40. the Decree of the State Arbitration No. 27/1981 Coll. of L., which stipulates the fundamental conditions for the supply of health and veterinary products, in the wording of Decree No. 142/1989 Coll. of L.,  
41. the Decree of the Federal Ministry of Foreign Trade No. 53/1981 Coll. of L., on the conditions for providing foreign economic services in the area of transport,  
42. the Decree of the Czech Ministry of Culture No. 57/1981 Coll. of L., on the authorizing, amending and revoking of licenses for the provisions of foreign economic services,  
43. the Decree of the Slovak Ministry of Culture No. 61/1981 Coll. of L., on the authorizing, amending and revoking of licenses for the provision of foreign economic services,  
44. the Decree of the State Arbitration No. 91/1981 Coll. of L., which stipulates the fundamental conditions for the supply of vegetables and fruits for internal trade organizations and processing

industry, in the wording of Decree No. 180/1989 Coll. of L.,  
45. the Decree of the Federal Ministry of Finance No. 179/1982 Coll. of L., on the extent and the conditions of insurance applicable to socialist organizations,  
46. the Decree of the Federal Ministry of Technical and Contribution Development No. 181/1982 Coll. of L., on the fundamental conditions for the supply to institutes of scientific-technological development, in the wording of Decree No. 154/1989 Coll. of L.,  
47. the decree of the Czech Ministry of Health No. 23/1893 Coll. of L., on the granting, amending and revoking of licenses for the provision of foreign economic services in the area of spa treatment, and on the control of such services,  
48. the Decree of the State Arbitration No. 24/1983 Coll. of L., on the fundamental conditions for the supply of collectible scrap and materials, in the wording of Decree No. 140/1989 Coll. of L.,  
49. the Decree of the Federal Ministry of Foreign Trade No. 104/1983 Coll. of L., on the import of capital equipment,  
50. the Decree of the Federal Ministry of Transport No. 8/1984 Coll. of L., on the fundamental conditions for the supply of construction materials and building parts,  
52. the Decree of the Slovak Ministry of Health No. 62/1984 Coll. of L., on the granting, amending and revoking of licenses for the provision of foreign economic services in the area of spa treatment, and the control of such services,  
53. the Decree of the Federal Ministry of Metallurgy and Heavy Engineering, the Federal Ministry of General Engineering, and the Federal Ministry of Electrical Engineering No. 13/1985 Coll. of L., on the fundamental conditions of engineering and electrical supplies determined for important projects in Czechoslovakia, in the wording of Decree No. 29/1990 Coll. of L.,  
54. the Decree of the Federal Statistical Office No. 49/1985 Coll. of L., on the fundamental conditions for the supply of work and services in the area of automated data, in the wording of Decree No. 170/1989 Coll. of L.,  
55. the Decree of the Federal Ministry of Foreign Trade, the Federal Ministry of Metallurgy and Heavy Engineering, the Federal Ministry of General Engineering, and the Federal Ministry of Electrical engineering No. 31/1986 Coll. of L., on the fundamental conditions for the supply of exported capital equipment,  
56. the Decree of the Federal Ministry of Agriculture and Food No. 130/1988 Coll. of L., on the principles of sales of agricultural products to members and employees of socialist organizations involved in agricultural production,  
57. the Decree of the Federal Ministry of Agriculture and Food No. 155/1988 Coll. of L., on the fundamental conditions for the provision of agricultural products,  
58. the Decree of the Federal Ministry of Agriculture and Food No. 156/1988 Coll. of L., on the fundamental conditions for the supply of foodstuffs and some other products,  
59. the Decree of the Federal Ministry of Transport and Communications No. 143/1989 Coll. of L., on the agreement on the preparation of railway rolling stock consignments,  
60. the Decree of the State Arbitration No. 57/1990 Coll. of L., on the interim amendment of the provisions on economic obligations (referred to in Section 295 subsection 2 of the Economic Code) in the branches of the Federal Ministry of Metallurgy, Engineering and Electrical Engineering, the Czech Ministry of Construction and Building and the Slovak Ministry of Construction and Building,  
61. the Decree of the Federal Ministry of Foreign Trade No. 265/1990 Coll. of L., on the establishment and operation of commercial offices of non-residents,

62. the Decree of the Federal Ministry of Foreign Trade No. 533/1990 Coll. of L., on granting licenses for foreign trade activities, on effecting foreign trade activities without registration or a license, and on performing foreign trade activities by non-residents,

63. the Decree of the Czechoslovak State Bank No. 386/1991 Coll. of L., on the payment relationships and accounting procedures,

64. the Decree of the Czechoslovak State Bank No. 414/1991 Coll. of L., on inter-bank payment relationship and accounting procedure,

65. the Decree of the Federal Ministry of Transport No. 17.525/1981, on the procedures of Czechoslovak organizations when providing foreign economic services during the transportation of objects (registered in Volume No.33/1981 Coll. of L.)

66. the Decree of the State Arbitration No. 2/1984 of November 15, 1984, which amends economic obligations related to the construction of the nuclear energy plant at Temelín (registered in Volume No 1/1985 Coll. of L.),

67. the Decree of the Ministry of Internal Trade No. 4/1952 U.I., which stipulates detailed provisions for auctions other than distraintments,

68. the fundamental conditions for the supply of products, exported by the Foreign Trade Organization Chemapol Praha and Chemapol Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, in the amended wording of the Decree of the Federal Ministry of Foreign Trade No. 12/1977 published in the Bulletin of the Federal Ministry of Foreign Trade,

69. the fundamental conditions for the supply of products, imported by the Foreign Trade Organizations Chemapol Praha and Chemapol Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, in the wording of amendments of 30 March 1965 and the Decree of the Federal Ministry of Foreign Trade No. 10/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

70. the fundamental conditions for the supply of products exported by the Foreign Trade Organizations Metalimex and Kerametal, issued by the Minister of Foreign Trade on 25 July 1964, in the wording of the Decree of the Federal Ministry of Foreign Trade No. 27/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

71. the fundamental conditions for the supply of products imported by the Foreign Trade Organizations Metalimex and Kerametal, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of the Federal Ministry of Foreign Trade on 30 March 1965 and by the Decree No. 26/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

72. the fundamental conditions for the supply of products exported by the Foreign trade Organization Pragoexport, issued by the Minister of Foreign Trade on 25 July 1964, as amended by amendments introduced by the Decree of the Federal Ministry of Foreign Trade No. 11/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

73. the fundamental conditions for the supply of products exported by the Foreign Trade Organizations Ligna Praha and Drevounia Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, as amended by amendments introduced by the Decree of the Federal Ministry of Foreign Trade No. 13/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

74. the fundamental conditions for the supply of products imported by the Foreign Trade Organizations Ligna Prague and Drevounia Bratislava, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and of the Decree of the Federal Ministry of Foreign Trade No. 9/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

75. the fundamental provisions of the supply of products exported by the Foreign Trade Organization „Czechoslovak Ceramics“, issued by the Minister of Foreign Trade on 25 July 1964, as amended by amendments introduced by the Decree of the Federal Ministry of Foreign Trade of Foreign Trade,

76. the fundamental conditions for the supply of products imported by the Foreign Trade Organization „Czechoslovak Ceramics“, issued by the Federal Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and of the Decree of the Federal Ministry of Foreign Trade No. 24/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

77. the fundamental conditions for the supply of engineering products for export, issued by the Minister of Foreign Trade on 25 July 1964, in the wording of the amendment effected by the Decree of the Federal Ministry of Foreign Trade No. 5/1977, published in the Bulletin of the Federal Ministry of Foreign Trade,

78. the fundamental conditions for the supply of imported engineering products, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and of the Decree of the Federal Ministry of Foreign Trade No. 5/1980, published in the Bulletin of the Federal Ministry of Foreign Trade,

79. the fundamental conditions for the supply of products exported by the Foreign Trade Organizations Centrotex, Exico and Karaexport, issued by the Minister of Foreign Trade on 25 July 1964, in the wording of changes and amendments effected by the Decree of the Federal Ministry of Foreign Trade No. 6/1979, published in the Bulletin of the Federal Ministry of Foreign Trade,

80. the fundamental conditions for the supply of raw materials, materials and products imported by the Foreign Trade Organizations Centrotex, Exico and Karaexport, issued by the Minister of Foreign Trade on 25 July 1964, in the wording of changes and amendments effected by the Amendment of 30 March 1965 and by the Decree of the Federal Ministry of Foreign Trade No. 5/1979, published in the Bulletin of the Federal Ministry of Foreign Trade,

81. the fundamental conditions for the supply of products exported by the Foreign Trade Organization Ferromet, issued by the Minister of Foreign Trade on 25 July 1964 in the wording of changes and amendments effected by the Decree of the Federal Ministry of Foreign Trade No. 7/1978 ( the Bulletin of the Federal Ministry of Foreign Trade),

82. the fundamental conditions for the supply of products imported by the Foreign Trade Organization Artia and Slovart, issued by the Minister of Foreign Trade on 25 July 1964 in the wording of changes and Amendment of 30 March 1965 and the Decree of the Federal Ministry of Foreign Trade No. 19/1981, published in the Bulletin of the Federal Ministry of Foreign Trade,

83. the fundamental conditions for the supply of products exported by Foreign Trade Organization Artia and Slovart, issued By the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30 March 1965 and the Decree of the Federal Ministry of Foreign Trade No. 18/1981, in the Bulletin of the Federal Ministry of Foreign Trade,

84. the fundamental conditions for the supply of the export of foodstuffs and agricultural products, issued by the Minister of Foreign Trade on 25 July 1964, in the wording of the Decree of the Federal Ministry of Foreign Trade No. 33/1977, published in the bulletin of the Federal Ministry of Foreign Trade,

85. the fundamental conditions for the supply of imported foodstuffs and agricultural products, issued by the Minister of Foreign Trade on 25 July 1964, as amended by the Amendment of 30

March 1965 and Decree of the Federal Ministry of Foreign Trade No. 19/1983, published in the Bulletin of the Federal Ministry of Foreign Trade,

86. the Decree of the Federal Ministry of Foreign Trade of 7 July 1978, which stipulates the fundamental conditions for the supply of glass products exported by the joint-stock company Skloexport.

**Section 773**

The transport (carriage) regulations and the implementing provisions of Act No. 61/1952 Coll. of L., on maritime navigation and on the liability of damage caused to the consignment shall not be applicable, provided that they contradict the provisions referred to in Sections 622 and 624 of this Act, the other provisions of these regulations shall remain unaffected.

**Section 774**

The Decree of the Minister of Finance No. 63/1989 Coll. on auditors and their activities shall also apply to auditors' activities under Section 39 of this Act, until new legal provisions are enacted.

**Section 774a**

The legislation of the European Communities and the European Union listed in an annex hereto shall be transposed into the Slovak law by this Act.

**Section 775**

This Act shall enter into effect on 1 January 1992.

**Annex  
to the Act 513/1991 Coll.,  
as later amended**

**List of transposed legislation of the European Communities and the European Union**

1. First Directive of the Council 68/151/EEC from March 9, 1968 on coordination of protection measures, which the member States shall require from companies in order to protect interests of shareholders and third parties, within the meaning of Article 58, section 2 of the Treaty, with the aim to ensure equality of such protection measures within the entire Community (Official Bulletin of the European Communities L 065, March 14, 1968), as amended by the Directive of the Council 2003/58/EEC from July 15, 2003 (Official Bulletin of the European Communities L 221, September 4, 2003),
2. Second Directive of the Council 68/151/EEC from March 9, 1968 on coordination of protection measures, which the member States shall require from companies in order to protect interests of shareholders and third parties, within the meaning of Article 58, section 2 of the Treaty, with respect to establishment of joint-stock companies, and maintenance and change of their stock capital, with the aim to ensure equality of such protection measures within the entire Community (Official Bulletin of the European Communities L 026, January 31, 1977), as amended by the Directive of the Council 95/1/EEC from November 23, 1992 (Official Bulletin of the European Communities L 347, November 28, 1992).
3. Third Directive of the Council 78/855/EEC from October 9, 1978 on mergers and takeovers of joint-stock companies, making reference to Article 54(3) paragraph g) of the Treaty (Official Bulletin of the European Communities L 295, October 20, 1978).
4. Sixth Directive of the Council 82/891/EEC from December 17, 1982 on split of joint-stock companies, making reference to Article 54(3) paragraph g) of the Treaty (Official Bulletin of the European Communities L 378, December 31, 1982).
5. Eleventh Directive of the Council 89/666/EEC from December 21, 1989 on requirements of disclosure of data concerning branches established in a certain member State by certain types of companies, which are governed by the law of another member State (Official Bulletin of the European Communities L 295, December 30, 1989).
6. Twelfth Directive of the Council 89/667/EEC from December 21, 1989 on limited liability companies with a sole member (Official Bulletin of the European Communities L 395, December 30, 1989).
7. Directive of the Council 2000/35/EEC from June 29, 2003 on fight against payment delays in business transactions (Official Bulletin of the European Communities L 200, August 8, 2000).